TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

No. 811.

THE UNITED STATES, APPELLANT,

vs.

ALAN H. WOODWARD, OSCAR W. UNDERWOOD AND REGINALD H. BANISTER, AS EXECUTORS OF JOSEPH H. WOODWARD, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 10, 1921.

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INDEX.

1 In the United States Court of Claims.

ALAN H. WOODWARD, OSCAR W. UNDERWOOD, REGINALD H. BANISTER, in their capacity as executors of JOSEPH H. WOODWARD, deceased,
vs.
THE UNITED STATES.
No. 34734.

I. Petition.

Filed November 18, 1920.

To the honorable the Chief Justice and Judges of the Court of Claims:

The claimant, Alan H. Woodward, Oscar W. Underwood, and Reginald H. Banister (all of Birmingham, Alabama), in their capacity as executors of Joseph H. Woodward, deceased, files this their petition in the above entitled cause, and shows the court and alleges as follows:

2 I.

Joseph H. Woodward was a resident citizen of the United States of America, and resided at Birmingham, Jefferson County, Alabama, and he departed this life at his residence in Birmingham, Alabama, on, to wit, the 15th day of December, 1917. The said Joseph H. Woodward had at all times prior to his death, borne true allegiance to the United States of America, and had not, in any way, voluntarily given encouragement to rebellion against said Government, or aided or abetted in any manner, or given comfort to any sovereign or government that is or ever has been, at war with the United States Government.

II.

Each and all of your petitioners are resident citizens of the United States of America, and reside at Birmingham, Jefferson County, Alabama, and they and each of them have, at all times, borne true allegiance to the Government of the United States, and have not, in any way, aided, abetted, or given encouragement to rebellion against said Government, or at any time aided or abetted in any manner or given comfort to any sovereign or government that is, or ever has been, at war with the United States Government.

III.

The said Joseph H. Woodward died leaving a last will and testament, with codicil thereto, which will and codicil was duly probated in the probate court of Jefferson County, Alabama, on, to wit, the

21st day of December, 1917, and letters testamentary thereon were issued to your petitioners by the said probate court, on to wit, the
21st day of December, 1917, and a duly authenticated copy of
3 the record of the appointment is filed with this petition, and
your petitioners are now, and have been continuously executors of said estate from the time of issue of said letters testamentary down to the time of the filing of this petition.

IV.

The said Joseph H. Woodward in and by said will and codicil made certain money bequests to diverse legatees and made certain specific bequests to certain devisees and, or legatees, devising to them specifically certain real and personal property, which property was not income producing and produced no income during the year 1918, and, all of the rest and residue of the property, both real, personal, and mixed property of every kind and character and wheresoever situated, of which the said Joseph H. Woodward died seized and possessed, was devised by a general devise, and, or legacy, by said Joseph H. Woodward to a trustee in trust, the net income to be paid over to the wife, children, or lineal descendants of said Joseph H. Woodward, as is more fully set forth in said will, and, or codicil.

The said Joseph H. Woodward, at the time of his death being a resident citizen of Jefferson County, Alabama, the probate court of Jefferson County, Alabama, had primarily the exclusive jurisdiction of the administration of said estate.

Under the laws of the State of Alabama, one year from date of grant of letters testamentary is allowed in which claims can be presented against the estate of a decedent, and no devisee and, or legatee, under a will has a right to enforce payment or delivery of a bequest or legacy before the expiration of one year from the date of grant of letters testamentary, and no devisee, and, or legatee, of a
general bequest or legacy is entitled to income or earnings
4 from property or assets, collected, earned, or accrued prior to
the expiration of one year from the grant of letters testamentary and the income or earnings from all property and assets of an estate other than property and assets specifically devised and, or bequeathed, collected, earned, or accrued prior to one year from date of grant of letters testamentary, belong to the estate of decedent for the benefit of the estate, and such income and, or earnings are and become the property and, or assets of the estate.

Your petitioners in their capacity as executors as aforesaid during the year 1918 and prior to the 21st day of December, 1918, collected all the income and earnings on and from the property and assets of said estate, all of said income and earnings collected being collected from stock, bonds, choses in action, and personal property, except that two thousand one hundred and thirty-eight and 10-100 ($2,138.10) dollars of said income so collected was collected from real

property, and none of said income or earnings was collected from property specifically bequeathed or devised by said will and, or codicil of said Joseph H. Woodward, deceased, and all of said income and or earnings so collected by your petitioners as executors as aforesaid was used and applied by your petitioners in their capacity as executors as aforesaid, in and towards the payment of the "estate tax" (to the United States) and, or other valid claims or charges against said estate, and your petitioners in their capacity as executors as aforesaid had the legal right to so use and apply said income and, or earnings.

V.

That in conformity with the requirements of secs. 223–225 of the "revenue act of 1918," your petitioners in their capacity as executors aforesaid, during the year 1919, and within the time prescribed by law, made and filed with the internal revenue collector (of the United States of America) for the district in which Birmingham, Jefferson County, Alabama, is located, a return of all of the income received by your petitioners in their capacity as executors of said estate during the year 1918, all in conformity with the requirements of law.

In and by said income tax return, your petitioners in their capacity as executors as aforesaid, claimed deductions authorized by the provisions of section 214 of the revenue act of 1918, including a deduction of $489,834.07, which was the amount of "Estate tax" chargeable against said estate as shown by the return for "Estate tax" filed (by your petitioners as executors as aforesaid, in pursuance of the requirements of law) with the internal revenue collector (of the United States of America) for the district in which Birmingham, Jefferson County, Alabama, is located, and which amount of "Estate tax" was paid by your petitioners in their capacity as executors aforesaid to the said internal revenue collector for the district in which Birmingham, Jefferson County, Alabama, is located, and which "Estate tax" petitioners aver was paid or accrued in the year 1918, and which "Estate tax" was imposed by the United States, or by the authority of the United States on or against the estate of Joseph H. Woodward under the revenue act approved October 3rd, 1917.

VI.

The Treasury Department of the United States, by or through the Commissioner of Internal Revenue (or other authorized officer) wrongfully refused to allow as a deduction on the said income tax return the said $489,834.07 "Estate tax" paid as aforesaid, or any part thereof, and wrongfully, on to wit, in October, 1919, made an assessment of income tax on said income tax return against your petitioners as executors as aforesaid, or against the estate of Joseph H. Woodward, to or in the amount of $165,075.78, and through the internal revenue collector for the district in which

Birmingham, Jefferson County, Alabama, is located, made demand on your petitioners in their capacity as executors as aforesaid for the payment of said tax so assessed.

Your petitioners, in their capacity as executors as aforesaid, protested against the assessment on said income tax return of said tax against your petitioners, or said estate, and declined to pay the same upon the ground that the said estate of Joseph H. Woodward, or your petitioners in their capacity as executors of said estate, were entitled to a deduction on said income tax return for said "Estate tax" paid, and claimed in said return under the provisions of section 214 of the revenue act of 1918 which is as follows:

"Section 214 (a). That in computing net income there shall be allowed as deductions: * * *

"(3) Taxes paid or accrued within the taxable year imposed,

"(a) By the authority of the United States except income, war-profits, and excess-profits taxes."

Upon said protest being made by your petitioners as aforesaid and on the refusal of your petitioners to pay said tax, the said Treasury Department by or through the Commissioner of Internal Revenue (or other authorized officer) took under consideration the said protest, but thereafter wrongfully declined and refused to allow said deduction claimed, or any part thereof, and on, to wit, the 19th day of July, 1920, the said internal revenue collector of the district in which Birmingham, Jefferson County, Alabama, is located, made a second demand on your petitioners in their capacity as executors as
7 aforesaid for the payment of said tax of $165,075.78, with threats of penalties and interest against your petitioners, in their capacity as executors as aforesaid, or said estate, if payment was not made, and which intimation that if payment was not made, summary action would be taken to enforce payment of said tax.

In order to avoid penalties, interest, distraint, and or summary proceedings for the enforcement of the collection of said tax, your petitioners in their capacity as executors as aforesaid, on, to wit, July 21st, 1920, made payment of said tax claimed of $165,075.78 to said internal revenue collector for the district in which Birmingham, Jefferson County, Alabama, is located, but at the time of making payment of said tax, protested against said tax and the payment thereof, and paid said tax under protest, and at the time of making payment, gave notice to the said collector that proceedings would be instituted to recover the said sum so paid, and which your petitioners as executors as aforesaid were wrongfully required to pay.

On to wit, the 21st day of July, 1920, your petitioners in their capacity as executors as aforesaid, duly filed an application with the said Treasury Department, through the said collector of internal revenue, to whom said tax was paid, praying for the refund of all of said tax so paid as aforesaid (which was the procedure required by said Treasury Department), and your petitioners are informed and believe that the said internal revenue collector in the

regular course of his official business, forwarded said application for refund to the Treasury Department for its consideration.

Said application was made on form 46 of the office of the Commissioner of Internal Revenue of the Treasury Department as required, and was in all respects complete, regular and in ac-
8 cordance with the laws and regulations, which application was duly verified by the affidavit of one of your petitioners, and the reasons set forth by your petitioners in their said claim for refund was that your petitioners as executors as aforesaid, or the estate of J. H. Woodward, were entitled, under the law as aforesaid, to a deduction of said "Estate tax" paid as aforesaid.

Although said application was in all respects complete and in due form, nevertheless, or or about the 21st day of October, 1920, the Secretary of the Treasury, or Commissioner of Internal Revenue, or other authorized officer of the United States Government, refused and denied said application, and has continuously denied and still denies and refuses to pay your petitioners the money asked for and demanded in said application as aforesaid, all of these facts being shown by the records of the office of the Commissioner of Internal Revenue of the Treasury Department, and being hereby referred to or prayed to be read and considered as a part of this petition.

VII.

There is no provision in the will, and, or codicil of Joseph H. Woodward, deceased, in regard to the "Estate tax," imposed by the United States of America, or the payment thereof, other than the general provision in said will, and, or codicil directing the executors to pay all debts and or charges against the estate of deceased, including cost and expense of administration of said estate.

VIII.

Your petitioners in their capacity as executors as aforesaid, are advised by counsel, and therefore aver, that the collection of said income tax collected from your petitioners in their capacity as executors as aforesaid, was wrongful, erroneous, and illegal,
9 which reasons were urged at the time claim for refund was made or pending in the Treasury Department, or before the Commissioner of Internal Revenue, or other authorized officer, and which are now urged here for reasons, viz:

(1) Your petitioners in their capacity as executors as aforesaid, or the estate of Joseph H. Woodward, under the provisions of section 214 of the revenue act of 1918, were entitled in the computation of the net income on said income tax return to an allowance as a deduction of the amount of said "Estate tax" paid, imposed by the United States as aforesaid, which tax was paid or accrued in the year 1918.

(2) If said "Estate tax" paid as aforesaid had been allowed as a deduction, as rightfully and legally it should have been allowed, neither your petitioners in the capacity as executors as aforesaid or said estate would have been liable for or chargeable with any income tax on said return, and no assessment of income tax of $165,075.78 or any other sum would or should have been made against either your petitioners in their capacity as executors as aforesaid, or said estate.

IX.

No action upon this claim, other than herein set forth, has been taken before Congress or other of the departments of the Government, or in any court other than the petition filed in this court.

X.

Your petitioners, Alan H. Woodward, Oscar W. Underwood, and Reginald H. Banister, in their capacity as executors of Joseph H. Woodward, deceased, aver that there is now justly due and owing to them in their capacity as executors as aforesaid, by the
10 United States, the said sum of $165,075.78, and that petitioners in their capacity as executors as aforesaid are justly entitled to the said amount from the United States after allowing all just credits and offsets; and that your petitioners in their capacity as executors as aforesaid are the sole owners of the claim herein sued upon, and that no assignment or transfer of the said claim, or any part thereof, or any interest thereon has been made. Wherefore, your petitioners pray for judgment against the United States for the said sum of $165,075.78, which is the sum your petitioners were wrongfully required to pay to the United States as income tax as aforesaid.

ALAN H. WOODWARD,
OSCAR W. UNDERWOOD,
REGINALD H. BANISTER,
In their Capacity as Executors of Joseph H. Woodward, Deceased.
By E. J. SMYER, *Attorney.*

STATE OF ALABAMA, *Jefferson County.*

Before me, ETHEL M. WARE, a notary public in and for said county, in said State, personally appeared A. H. Woodward, who is known to me, and who being by me duly sworn, according to law, deposeth and saith that he is one of the executors of Joseph H. Woodward, deceased, and that he has read and understands the foregoing petition, and that the facts stated in said petition are true, and those stated on advise of counsel are believed to be true.

A. H. WOODWARD.

Sworn to and subscribed before me this 12th day of November, 1920.

[SEAL.]

ETHEL M. WARE,
Notary Public.

11 *II. General Traverse.*

Filed January 18, 1921.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by rule 34.

III. Argument and submission of case.

On February 16, 1921, this case was argued and submitted on merits by Mr. E. J. Smyer, for the plaintiffs, and Mr. Assistant Attorney General Frank Davis, jr., for the defendants.

12 *IV. Findings of fact, conclusion of law, and opinion of the court by Downey, J.*

Entered March 14, 1921.

In this case the parties by their attorneys have entered into an agreed statement of facts, the defendant acting by and through its Assistant Attorney General and the plaintiffs by their attorney, and they have agreed "that the following statement of facts is true and may embrace the findings of fact by the court in this case." Thereupon the court makes the following findings of fact, which are the agreed statement of facts:

"I.

"Alan H. Woodward, Oscar W. Underwood, and Reginald H. Banister are executors of the estate of Joseph H. Woodward, deceased, and bring this action in their capacity as such executors.

"II.

"The plaintiffs are each and all citizens of the United States and residents of the city of Birmingham, county of Jefferson, State of Alabama, and have at all times borne true allegiance to the Government of the United States and have not in any way aided, abetted, or given encouragement to rebellion against the said Government, or at any time aided or abetted in any manner, or given comfort to any sovereign or Government that is, or ever has been, at war with the United States.

"III.

"Joseph H. Woodward was a citizen of the United States and resided at Birmingham, Jefferson County, State of Alabama, and died at his said residence on the 15th day of December, 1917. The

said Joseph H. Woodward had at all times prior to his death borne true allegiance to the United States of America, and had not in any way voluntarily given encouragement to rebellion against said Government, or aided or abetted in any manner, or given comfort to any sovereign or Government that is, or ever has been, at war with the United States.

13 "IV.

"The said Joseph H. Woodward died leaving a last will and testament with codicil thereto; which will and codicil was duly probated in the Probate Court of Jefferson County, State of Alabama, on the 21st day of December, 1917, and letters testamentary therein were issued to said executors by said Probate Court on the 21st day of December, 1917. A certified copy of said last will and testament and codicil thereto is annexed hereto, made a part hereof, and is marked Exhibit A.

"V.

"The said Joseph H. Woodward in and by said will and codicil made certain money bequests to devisees and legatees and made certain specific bequests to certain devisees and legatees, devising to them certain real and personal property, which property was not income producing, and produced no income during the year 1918. All the rest and residue of the property, both real, personal, and mixed, of every kind and character, of which said Joseph H. Woodward, deceased, was seized and possessed, was devised by a general devise or legacy by said Joseph H. Woodward to a trustee in trust, the net income to be paid over to the wife, children, or lineal descendants of said Joseph H. Woodward.

"VI.

"The said executors, in their capacity as executors of the estate of said Joseph H. Woodward, during the year 1918 and prior to the 21st day of December, 1918, collected all the income and earnings on and from the property and assets of said estate, all of said income and earnings collected being collected from stock, bonds, choses in action, and personal property, except that $2,138.10 of said income so collected was collected from real property, and none of said income or earnings was collected from property specifically bequeathed or devised by said will or codicil of said Joseph H. Woodward, deceased; and all of said income and earnings so collected by said executors was used and applied by them in their capacity as such executors in and towards the payment to the United States of the 'estate tax' (imposed by the act of September 8, 1916, and amendments thereto by the acts of March 3, 1917, and October 3, 1917) and other valid claims or charges against said estate.

"The gross amount of income received by the executors from the said estate for the year 1918 was less than the amount of the said 'estate tax' paid by them to the United States.

"In conformity with the requirements of sections 223–225 of the revenue act of 1918 the said executors during the year 1919 and within the time prescribed by law made and filed with the collector of internal revenue for the district in which Birmingham, Alabama, is located a return of all the income received during the year 1918 by said executors in their capacity as executors of the estate of said Joseph H. Woodward, deceased. In said income-tax return said executors claimed deductions under the provisions of section 214 of the revenue act of 1918, including a deduction of $489,834.07,
14 which was the amount of 'estate tax' chargeable against said estate as shown by the return for 'estate tax' filed by said executors with the collector of internal revenue for the district in which Birmingham, Alabama, is located, and which amount of 'estate tax' was paid by said executors to said collector on the 8th day of February, 1919.

"The Commissioner of Internal Revenue refused to allow as a deduction on the said income-tax return the said $489,834.07 'estate tax' so paid by said executors, and in October, 1919, made an assessment of income tax on said income-tax return against said executors or against the estate of Joseph H. Woodward in the amount of $165,075.78, and through the collector of internal revenue for the district in which Birmingham, Alabama, was located, made demand on said executors for the payment of the tax so assessed.

"VII.

"The said executors protested against the assessment on said income-tax return of said tax against them as such executors, or against said estate, and declined to pay the same, upon the ground that said estate of Joseph H. Woodward or said executors was entitled to a deduction on said income-tax return for the said 'estate tax' paid.

"VIII.

"Upon said protest being made by said executors, as aforesaid, and upon their refusal to pay said tax, the Commissioner of Internal Revenue declined and refused to allow said deduction of the claim or any part thereof; and on the 19th day of July, 1920, the collector of internal revenue for the said district in which Birmingham, Alabama, is located, made a second demand on said executors for the payment of said tax of $165,075.78, with threats of penalties and interest against said executors, if payment was not made, and with intimation that if payment was not made summary action would be taken to enforce payment of said tax.

"IX.

"In order to avoid penalties, interest, restrain, or other summary proceedings for the enforcement of the collection of said tax, said executors, on July 21, 1920, made payment of said tax claimed of $165,075.78 to the said collector of internal revenue for the district in which Birmingham, Alabama, is located, but at the time of making payment of said tax protested against said tax and the payment thereof and paid the tax under protest, at the same time giving notice to the said collector that proceedings would be instituted to recover the said sum so paid.

"X.

"On July 21, 1920, said executors duly filed an application with the Commissioner of Internal Revenue praying for the refund of all of said tax so paid. Said application for refund was in all respects complete and in due form, but was on or about the 21st day of October, 1920, denied and rejected by the Commissioner of Internal Revenue, who still denies and refuses to pay said executors the money asked for and demanded by them in said application.

"XI.

"The said sum of $165,075.78, so paid by said executors as and for a tax as aforesaid, was received and is still retained by the United States.

"XII.

"The said executors, in their capacity as such, are the sole owners of the claim sued upon herein, and no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made.

"XIII.

"All public laws of the State of Alabama, pertinent, are to be considered as if duly authenticated and offered in evidence.

"XIV.

"If the court concludes as a matter of law that the plaintiffs are entitled to judgment against the United States, the amount to which they are entitled is the sum of $165,075.78."

XV.

The court further finds that the said will and codical made Exhibit A to the statement of facts names the plaintiffs as executors. They are directed to pay the cost and expenses of administering the

estate, including funeral expenses and debts and the money bequests out of moneys on hand at the time of the testator's death if sufficient therefor. The rest of the money on hand is directed to be disposed of by the executors paying one-half of it to the trustee named in the will and codicil for investment, and the other half in equal parts to the wife, son, and two daughters of the testator. All of his property, except as has been stated in the findings above, was devised and bequeathed to a trust company named as trsutee, and the executors are directed to turn over as soon as practicable the trust property to the trustee, who is authorized to preserve, control, and invest or reinvest the same and distribute the net income thereof among the widow and children and grandchildren of the testator in designated proportions. Upon the death of the children or the survivor of them the estate in the hands of the truetee is to pass to the grandchildren, with some exceptions not material.

Conclusion of law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiffs are entitled to recover the sum of $165,075.78. It is therefore adjudged and ordered that the plaintiffs recover of and from the United States the sum of one hundred and sixty-five thousand seventy-five dollars and seventy-eight cents ($165,075.78.)

16 *Opinion.*

DOWNEY, Judge, delivered the opinion of the court:

The plaintiffs are the duly appointed and acting executors of the last will and testament of Joseph H. Woodward, deceased, a resident and citizen of the State of Alabama, who died testate, December 17, 1917. His will was duly admitted to probate and letters testamentary were issued to the plaintiffs named therein as executors on December 21, 1917. There is no controversy as to the facts and they are found as agreed upon by the parties.

Under the provisions of the war revenue act of October 3, 1917 (40 Stat., 300 at 324), amending the act of September 8, 1916 (39 Stat., 756 and 777), as amended by the act of March 3, 1917 (39 Stat., 1000 at 1002), the executors paid to the collector of internal revenue an estate tax in the sum of $489,834.07. No question is raised as to the validity of the estate tax so paid nor as to its amount. It becomes an important feature of the case in another respect.

The entire estate of the decedent passed into the hands of the executors, the plaintiffs herein, immediately after their qualification as such and during the year 1918 and prior to the 21st day of December of that year they collected income and earnings from the property and assets of the estate, all of such income being derived from stocks, bonds, choses in action, and personal property ex-

cept $2,130.10 derived from real property and none of said income was collected from property specifically devised or bequeathed by the will of the decedent. On the 12th of March, 1919, as required by section 225 of the revenue act of 1918 (40 Stat., 1074), the executors made and filed with the proper collector of internal revenue a return of the income received by them during the year 1918 as executors of said estate and in said income-tax return they claimed as a proper deduction under the provisions of section 214 of said revenue act the amount of said estate tax which had been paid by them to the collector of internal revenue on the 8th day of February, 1919. The Commissioner of Internal Revenue refused to allow said deduction and on said return assessed an income tax against said executors in the amount of $165,075.78 and made demand through the collector of internal revenue on said executors for the payment of the income tax so assessed. To avoid penalties or summary proceedings for the enforcement of the said income tax the executors on July 21, 1920, paid the same, but at the time of making payment protested and gave notice that they would institute suit to recover the same. Thereafter on July 21, 1920, said executors filed with the Commissioner of Internal Revenue an application for the refund of all of the said income tax so paid which application was thereafter denied by the Commissioner of Internal Revenue and this suit was instituted for the recovery of said sum of $165,075.78. In this instance the amount of the estate tax was in excess of the total amount of the income so that the action is brought for the recovery of the full amount of the income tax paid for the year 1918. But the question is as to the right to deduct from the income tax for that year the estate tax which accrued during the same year irrespective of the relative amounts.

17 The contention of the plaintiffs is that the income tax is imposed upon the "net income" of the estate and that by section 212 the net income was declared to mean the "gross income" as defined in section 213, less the deductions allowed by section 214, and it is contended that the estate tax which accrued during the year 1918 and was paid, as stated by the executors, is specifically within the provisions of section 214. That section provides that in computing net income there shall be allowed as deductions (1) all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business; (2) or interest paid or accrued within the taxable year on indebtedness, with an exception not material here; (3) "taxes paid or accrued within the taxable year imposed (*a*) by the authority of the United States, except income, war profits and excess profits taxes," or (*b*) by the authority of any of its possessions with the same exception, or (*c*) by the authority of any State, Territory, county, school district, or municipality of any State or Territory, or (*d*) in certain cases by authority of a foreign country. In addition to these there are other deductions authorized by section 214 not material here.

The defendant, in support of its contention that the estate tax could not be properly claimed as a deduction in the computation of the net income of the estate on which the income tax for the year 1918 was assessed, lays down in its brief two propositions as follows:

(1) "The Federal estate tax is a tax upon the passing of property from the dead to the living; it is toll taken from the property transferred and does not constitute a part of the estate which is received by the executors to be administered and settled."

(2) "The income tax is imposed upon the income received from the estate by the executors during the period of administration; the liquidation of the Federal estate tax by such executors does not constitute a payment of taxes by the estate within the meaning of section 214 (*a*) of the revenue act of 1918."

In discussing the first proposition the estate tax is referred to as "an excise on the transmission of the estate from the dead to the living," and it is said that "it is a 'toll' cut out of the estate in passing, and the property that reaches the executors is the original propery diminished by the amount of the tax. It follows that the amount of the tax does not constitute a part of the estate which is administered by the executors." And referring also to the income tax, as well as the estate tax, it is said that—

"The Government collects an income tax on the income accruing up to the moment of death. It then takes out of the estate a certain part known as the Federal estate tax. The remainder of the property of the deceased passes to the executors and becomes the estate, the income of which is taxable while the estate is being administered. When the estate passes into the possession of an executor he holds in trust for the United States that portion which is required to be deducted as a transfer tax. The remainder is the estate which he holds in trust for creditors and beneficiaries, the income of which is taxable. When he pays to the Government that which he has been holding in trust for it, he pays nothing out of the estate whose income is subject to tax. The law separates this part of the original estate from that part which is to be treated as the estate for purposes of the income tax."

18 The first proposition seems to be the foundation stone of the defendant's contention, and if it is not well founded argument predicated upon it must fail of support. For the purposes of its consideration it may be conceded, as contended, that the Federal estate tax is a tax upon the passing of property from the dead to the living, since for the purposes of the present discussion of the proposition it is immaterial whether that tax is a tax upon the passing of the property or upon the property itself. The theory of the proposition otherwise is that there is an immediate segregation of a part of the estate and a withholding thereof from the usual processes of administration, and that therefore the tax is not paid out of the estate to be administered.

Such a theory seems to be in conflict with the real facts and we may well question the right to inject into an interpretation of the law a

theory, no matter how desirable it may be from some standpoints, if inconsistency between it and the real facts must necessarily result. We may not, in construing statutes, disregard the plain meaning of words. We may not in fact apply recognized rules of construction at all if there is no ambiguity and hence no room for construction and we may not adopt an interpretative theory as to the law if it be inconsistent with established principles or the plain provisions of the law itself.

In considering this theory we are confronted, first, with established and well-recognized principles and, second, by pertinent and forceful provisions found in the taxing act itself. It is well settled, first, that the Federal Government does not undertake to enact statutes of descents or to provide for the administration of estates. These are matters reserved to the States themselves and it may not be inappropriate to observe that the general principles applicable to probate procedure in the administration of estates may be found to be much the same in all the States of the Union. Aside from the general principle it is important in construing the taxing act in the feature with which we are here concerned to observe that it recognizes the subjection of the entire estate of a decendent to the usual processes of administration under the established probate procedure of the proper jurisdiction and in no place suggests the theory that the act is itself intended to remove a part of the estate therefrom.

Section 205 of the act recognizes the fact that the entire estate of a decedent comes into the possession of his executors, if executors there be, for, return as to the gross estate, the deductions, and the resultant net estate is to be made by the executors as provided in the act and they are also to report "the tax paid or payable thereon." There is found no suggestion, even that a part of the estate is segregated at the death of the decedent and held, not by the executors as such, but as trustees in trust for the United States and such a theory is excluded by the act itself. There are too many contingencies, notably the matter of deductions provided for in section 203, and like matters, to permit of such a theory and, incidentally, it may be suggested that the allowance by that section as a deduction, of "such other charges against the estate as are allowed by the laws of the jurisdiction," strongly confirms the proposition as to a recognition of the proper probate jurisdiction over the entire estate.

19 If the theory of a segregation in fact as of the date of the death of the decedent cannot be maintained, it would seem that it must be a theory attaching in some intangible way to an unascertained part of the estate to be made certain during the processes of administration and operative retroactively. But the processes themselves exclude the idea that a part of the estate has not passed into the hands of the executors as executors.

But further, it is provided that the tax shall be paid by the executors (sec. 207) and that the collector shall grant receipts therefor

in duplicate and that such receipts shall entitle the executors to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts. These provisions can certainly be interpreted in no other way than as a recognition of the fact that the executors as executors, accountable to the proper probate court, and not as trustees for the United States, are chargeable with the whole estate which has come to their hands and are entitled to an acquittance as to the amount paid to the collector as estate tax just as upon presentment of proper vouchers they are to be credited with the amount of any proper debt paid or any proper expense of administration.

And there are other features, perhaps minor in a sense, but enlightening. The tax shall be a lien for ten years upon the gross estate (sec. 209) except parts used for payments of claims and expenses of administration, a provision entirely inconsistent with the theory of a segregation, for a segregated part of a thing can scarcely be made a lien, in a legal sense, on the remaining part, though the fixing of a lien is a recognized method of securing a payment to be made. And peculiarly, even after the amount of the tax, in theory a segregated part of the estate, is ascertained, the amount of money to be paid may still fluctuate. The tax is due one year after the decedent's death (sec. 204); but if paid before it is due, a discount at the rate of five per centum per annum from the time of payment to the date when due is to be allowed. Thus the segregated part is to be reduced by some fraction of five per centum; but for whose benefit? Under the theory of a segregation and a nonadministration and a holding in trust for the United States it must result that the United States allows its trustees a part of its property for turning it over before required to do so.

But on the other hand, for delays, interest is to be "added as a part of the tax" at the rate of ten per centum per annum from the time of the decedent's death, but at only six per centum if by reason of claims against the estate, necessary litigation or other unavoidable delay the tax can not be determined, a situation which under the theory advanced not only imposes a penalty on the estate for avoidable delays on the part of the executors but also for unavoidable delays, and changes the basis of the segregation and makes it contingent upon the processes of administration.

While referring to the stated theory of the defense and before proceeding with such other views as may occur, it is appropriate to resort to the extension of the theory, possibly necessary to its justification, to the question of the source of the income tax to be levied. The theory is, supporting the idea of a segregation, that it is the portion of the estate remaining after the segregation which is held in trust for creditors and beneficiaries and "the income of which is taxable." Again the theory is in conflict with the facts. More than that, the Government has proceeded upon one theory in collecting the income tax and defends upon another, for

the income tax assessed and collected was upon the income produced by the entire estate. And what an anomalous situation must result from an attempt to apply the theory! If the theory is correct, then income has been taxed which was not taxable. It was income derived from a portion of the estate segregated to the United States, and while it may be said that the earnings belong to the owner of the capital there is no provision for the payment of earnings as a part of the estate tax.

But primarily the executors are accountable to the proper probate court for their management of their trust and they could hardly discharge themselves from responsibility by accounting for less than all the income derived from the entire income-producing estate. Neither could they justify themselves in so handling the estate as to convert an income-producing portion thereof into idle assets.

The various provisions thus recited seem to clearly indicate that the tax is a charge upon the estate. The statute calls it an "estate tax." In Knowlton v. Moore, 178 U. S., 41, 65, the use of the heading "legacies and distributive shares of personal property" in the act was taken as indicative of what was in fact taxed. Here it is "estate." There the tax was upon the passing of legacies or distributive shares. The tax under consideration is imposed upon the transfer of the net estate. In Knowlton v. Moore the statute under consideration was the act of 1898, and it was declared to mean either that the tax was imposed on the passing of the whole amount of the personal estate, or on the passing of legacies or distributive shares of personalty, determined either by the separate sum of each legacy or distributive share or by the volume of the whole personal estate. The court, speaking through Mr. Justice (now Chief Justice) White, say (p. 65): "The statute clearly imposes the duty on the particular legacies or distributive shares, and not on the whole personal estate. It does not say that the tax is levied on the personal estate left by the deceased person, but it is imposed on legacies or distributive shares arising from such property."

It must be recognized that the Congress, in considering the act of 1916, was familiar with the act of 1898, and the construction of it by the Supreme Court in Knowlton v. Moore. Indeed, by reference to the report of the Committee on Ways and Mean (Report No. 922, 64th Cong., 1st sess.), having the bill in charge, it appears that the distinction between an estate tax upon the transfer of the estate and a tax upon the shares passing to distributees or legatees was had in view by the committee. It was said "Your committee deemed it advisable to recommend a Federal estate tax upon the transfer of the net estate rather than upon the shares passing to heirs and distributees or devises and legatees." See upon this point In re Hamlin, 226 N. Y., 407, where the court considers the proceedings in Congress upon the passage of the bill.

The question as to what was intended would seem to be set at rest, however, by section 208 of the act, 39 Stat., 779, which provides for

the collection of the tax if not paid within 60 days after it is due, and declares the purpose of the act as follows: "It being the
21 purpose and intent of this title that so far as is practicable, and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate before its distribution."

As sustaining the contention of the defendant that the estate tax "is a toll taken from the property transferred and does not constitute a part of the estate which is received by the executors to be administered and settled," we are referred to an opinion of the Acting Attorney General, dated April 10, 1920, and some cases to be noticed. It is said in that opinion, speaking of the executor or administrator: "It is in his capacity as the representative of those ultimately entitled to the estate that he is subject to income tax. By virtue of the Federal estate tax he may be said to act in a dual capacity. He must first take possession of that part of the estate which the Government has reserved to itself as a transfer tax. As to this he takes possession for the Government, and his sole duty is to turn it over to the Government. What comes to his hands as the representative of the beneficiaries of the estate is what is left of the original estate after deducting this tax."

This view ignores the legal status of an administrator, who is the personal representative of the decedent, and seeks to make him a representative of heirs or distributees.

As already stated, the estate tax is not a given percentage of the estate in kind. If the decedent left an estate composed largely of live stock the estate tax would not be satisfied by taking a part of the live stock; or if it were an estate composed of stocks and bonds the estate tax is not satisfied by taking such a percentage of the bonds and such a percentage of the shares. These different kinds of property are to be valued, and the estate tax is a sum equal to a percentage, which is made progressive, of the value. Nutt v. Knut, 200 U. S., 12, 21; United States v. Field, decided by the Supreme Court, February 28, 1921.

Prentiss v. Eisner, 260 Fed., 589, affirmed by the Circuit Court of Appeals, 267 Fed., 16, relied on by defendant, presented the question as to whether a legatee against whom had been assessed an inheritance tax under the laws of the State of New York could deduct that tax from her gross income in rendering a return of the income for taxation under the Federal statute. The case is different from the one before us in several aspects: (1) It involved a construction of the act of 1913; (2) it involved the right of the legatee to set off against her income a State inheritance tax; (3) it did not involve the right of executors or administrators charged with the duty of paying out of the estate of the decedent the estate tax to make a deduction from the gross income on account of a Federal tax which they must pay out of the estate in their hands. It was held by the Circuit Court of Appeals in the case mentioned that the legacy which the plaintiff received did not become her property until after it had suffered a diminution to the amount of the tax, and that the State

inheritance tax was not a tax paid out of her individual estate, "but was a payment out of the estate of her deceased father of that part of his estate which the State of New York had appropriated to itself, which payment was the condition precedent to the allowance by the State of the vesting of the remainder in the legatee." It is
22 not difficult to understand why a legatee is not allowed to deduct from her income tax the amount which was paid out of the estate before the amount of the legacy to which she would succeed could be known. The statute provides that the legacies themselves are not income but become capital in the hands of the legatees, and its purpose, as is stated in the act, is to collect the estate tax out of the estate before it reaches the hands of legatees or distributees. The case just mentioned admits that the tax is laid upon the estate. It recognizes the distinction between the tax on the legatee's right of succession and a tax upon the transfer of the estate itself.

The case of In re Hamlin, supra, was decided by the Court of Appeals of New York and involved, among other questions, the construction which the court would give to the tax imposed by the act of 1916. It was held that the act created an estate tax as distinguished from an inheritance tax and made it payable from the estate. The case considers not only the language of the act but the history of its passage through Congress, and said: "When the Congress provided that the tax was imposed upon the value of the net estate, the manner in which said value should be determined, and that the executor should pay the tax, and in section [208] above quoted said: 'It being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution,' the conclusion is inevitable that the tax was not imposed on legacies."

Another case to which we are referred is Plunkett v. Old Colony Trust Company, 124 N. E., 265, wherein the Massachusetts court holds that the tax imposed by the revenue acts of 1916 and 1917 is an estate tax imposed upon the net estate transferred by death and not upon a succession resulting from death. The single question presented was whether the Federal tax which had been paid should be charged entirely against the residue of the estate or apportioned pro rata among all the devisees and legatees, and after full consideration of the authorities it was held as has been stated.

In Lederer v. Northern Trust Co., 262 Fed., 52, the question was whether the collateral inheritance tax imposed by the State of Pennsylvania fell within the deductions allowed by section 203 of the Federal estate-tax act of 1916 in arriving at the value of the net estate on which the Federal act imposes the tax. It appeared that the Supreme Court of Pennsylvania construed the collateral inheritance tax of that State to be an estate tax and not a legacy tax, and that as such it was levied on and made a charge against the estate of the decedent. It was therefore held by the Circuit Court

of Appeals that the State tax fell within the provision of the Federal act as a charge against the estate of the decedent allowed by the laws of the jurisdiction under which the estate was being settled, and was therefore deductible from the gross estate in determining the net estate against which the Federal estate tax is assessed.

In United States v. Perkins, 163 U. S., 625, it appeared that the testator had bequeathed his estate to the United States Government, and the question was whether that bequest was subject to the inheritance tax authorized by the State of New York. The court held that the State act was not open to the objection that it was an attempt to tax the property of the United States, "since the tax
23 is imposed upon the legacy before it reaches the hands of the Government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it." This would be equally true if the estate had owed debts which had to be paid before the amount of the legacy could be known, or if there were liens upon the property bequeathed or devised.

In none of the cases to which we have referred is there a holding that the State or Federal Government, by either an inheritance or estate tax, takes a distinct part of or interest in an estate as distinguished from a tax equal to a stated percentage of its value.

Corbin v. Townshend, 103 Atl., 647, involved the question of the amount of succession tax under the State statute, and the Connecticut court allowed as deductions the item of taxes paid, including the Federal estate tax, "as an administration expense." The court said: "The Federal act of 1916 imposes a tax payable out of the estate before distribution, thus differing from the Federal inheritance tax of 1898, payable by the individual beneficiaries. * * * It is taken from the net estate before the distributive shares are determined rather than off the distributive shares. Its payment diminishes pro tanto the share of each beneficiary. The executor or administrator must pay the tax out of the estate before the shares of the legatees are ascertained. It is an obligation against the estate, and payable like any expense which falls under the head of administration expenses."

In re Roebling's Estate, 104 Atl., 295, in the Prerogative Court of New Jersey, the question was whether the estate tax imposed by the revenue act of 1916 was to be deducted from the value of the estates of decedents in assessing the transfer of the inheritance tax imposed by the State. It was held that the Federal tax must be deducted because it was a tax upon the estate. The court observed that the Federal tax resembles the probate duty of the act of July 1, 1862, 12 Stat., 483, "which was payable by the executor out of the estate, while the legacy duty therein provided for was payable by the beneficiaries."

Another case was that of In re Knight's Estate, before the Supreme Court of Pennsylvania, 104 Atl., 765, wherein the same ruling was made as that by the New Jersey court. The Supreme Court affirms the opinion of the lower court, which said relative to the tax: "It is denominated an estate tax, not a tax upon the succession or inheritance, and it is charged upon and payable out of the net estate of the decedent. It is imposed without regard to the provisions of the will or the law of the several States, the paramount taxing power of the Federal Government takes effect at the moment of the owner's death upon his entire estate, subject only to specific deductions. * * * and it requires payment therefrom of a tax according to a graduated scale, regulated by the net amount of the taxable estate."

Reference has been made to the case of In re Hamlin, 226 N. Y., 407, holding that the estate tax is payable out of the estate. Also to the case of Plunkett v. Old Colony Trust Company, wherein substantially the same ruling is made by the Massachusetts court.

24 In People v. Northern Trust Co., 289 Ill., 475, 124 N. E., 662, it is held that in computing the State inheritance tax on the value of property passing by a will the executor is entitled to have first deducted therefrom the Federal estate tax. The court said:

"The Federal estate tax is a charge, or an expense, against the estate of the decedent rather than against the shares of the legatees or the distributees, and as part of the expense of administration this tax should be deducted before computing the State inheritance tax."

It thus appears from the terms of the statute itself and its declared purpose that the estate tax is a tax which is levied upon, and payable out of, the estate in the hands of the executors, and that the authorities in some instances hold it to be a charge of administration, while all of them hold it to be payable out of the estate.

In allowing a deduction of taxes from gross income in order to ascertain the net income the statute excepts "income, war-profits, and excess-profits taxes." 40 Stat., 1067. It does not except the estate tax.

We are, in effect, asked to construe the statute so as to nullify one of its plain provisions, to wit, one of the exemptions provided for in the statute. If the correct construction should be a matter of doubt we think it proper to follow the rule laid down in Gould v. Gould, 245 U. S., 151 at 153. "In the interpretation of the statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government and in favor of the citizen." (Cited in the Field Case, decided Feb. 28, 1921.) We do not feel that we are justified in adding another exception to those provided for in the statute. If Congress had intended that the estate tax

should not be deducted in determining the net income it would have said so and included it in the exceptions, "income, war-profits, and excess-profits taxes."

Inasmuch as the estate tax must necessarily reduce the estate itself which ultimately goes to the distributees, legatees, or devisees, and reduces it by a tax that is ascertained by a progressive percentage of the value, it may well be that Congress, recognizing that feature, did not except the estate tax from the deductions authorized by the statute.

We are not unmindful of the importance of this holding and of its possible effect on revenues and the Public Treasury, but we can not conclude that such matters should be in anywise controlling.

We are of the opinion that the plaintiffs are entitled to judgment as claimed, and it is so ordered.

Graham, judge; Hay, judge; Booth, judge; and Campbell, chief justice, concur.

25 *V. Judgment of the court.*

At a Court of Claims held in the city of Washington on the fourteenth day of March, A. D. 1921, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the plaintiffs, and do order, adjudge, and decree that Alan H. Woodward, Oscar W. Underwood, Reginald H. Banister, in their capacity as executors of Joseph H. Woodward, deceased, as aforesaid, are entitled to recover and shall have and recover of and from the United States the sum of one hundred and sixty-five thousand seventy-five dollars and seventy-eight cents ($165,075.78).

BY THE COURT.

VI. Defendant's application for and allowance of an appeal.

From the judgment rendered in the above-entitled cause on the 14th day of March, 1921, in favor of the claimants, the defendants, by their Attorney General, on the 17th day of March, 1921, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ANNETTE ABBOTT ADAMS,
Assistant Attorney General.

Filed March 17, 1921.

Ordered: That the above appeal be allowed as prayed for.

BY THE COURT.

March 17, 1921.

26 Court of Claims.

ALAN H. WOODWARD, OSCAR W. UNDERWOOD, REGINALD H. BANISTER, in their capacity as executors of JOSEPH H. WOODWARD, deceased,
vs.
THE UNITED STATES.
No. 34734.

I, F. C. Kleinschmidt, assistant clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact and conclusion of law; of the opinion of the court by Downey, J.; of the judgment of the court; of the defendant's application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this 18th day of March, A. D. 1921.

[SEAL.] F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

(Indorsement on cover:) File No. 28168. Court of Claims. Term No. 811. The United States, appellant, vs. Alan H. Woodward, Oscar W. Underwood, and Reginald H. Banister, as executors of Joseph H. Woodward, deceased. Filed March 19th, 1921. File No. 28168.

In the Supreme Court of the United States.

OCTOBER TERM, 1920.

THE UNITED STATES, APPELLANT,
v.
ALAN H. WOODWARD, OSCAR W. UNDERWOOD, and Reginald H. Banister, in their capacity as executors of Joseph H. Woodward, deceased.
No. ——.

APPEAL FROM THE COURT OF CLAIMS OF THE UNITED STATES.

MOTION BY THE UNITED STATES TO ADVANCE.

The United States, by the Solicitor General, respectfully moves that this case be advanced for hearing on April 11, 1921.

The case arises under and involves the construction and application of revenue laws of the United States.

The case presents squarely the question whether the estate tax imposed by sec. 201 of the Revenue Act of 1916, 39 Stat., c. 463, pp. 756, 777, as amended by sec. 900 of the act of 1917, "upon the transfer of the net estate of every decedent dying after the passage of this act" is an allowable deduction in computing the net income of an estate taxable under

secs. 219, 210, 211, 212 of the act of 1918 by virtue of sec. 214 (a) of the act of 1918, providing—

> That in computing net income there shall be allowed as deductions: (3) Taxes paid or accrued within the taxable year imposed (a) by the authority of the United States, except income, war-profits, and excess-profits taxes. * * *

Joseph H. Woodward, a citizen and resident of Alabama, died on December 15, 1917, leaving an estate upon which an estate tax, imposed by the act of 1916, as amended, amounting to $489,834.07, was paid by his executor (claimants herein) in the year 1918. This estate tax exceeded in amount the *income* on the estate in the hands of the executors for the year 1918. In making their income tax return for this estate for the year 1918 the executors claimed a deduction under section 214 (a) of the act of 1918 on account of the estate tax of $489,834.07 paid by them. The Commissioner of Internal Revenue disallowed said deduction and assessed an income tax against the estate of $165,075.18. The executors protested against the assessment and declined payment. On April 10, 1920, the Attorney General rendered an opinion holding that the estate tax is a tax upon the passing of property from the dead to the living and does not constitute a part of the estate which is received by the executor to be administered and settled; that the income tax is imposed upon the income received from the estate by the executor during the period of administration, and that the

payment of the estate tax by the executor does not constitute a payment of taxes by the estate within the meaning of section 214 (a) of the act of 1918.

Thereafter, upon a second demand being made by the collector, the executors of Mr. Woodward paid under protest the income tax assessed, and, after due procedure, brought this suit in the Court of Claims to recover the amount so paid, namely, $165,075.78.

On March 14, 1921, the Court of Claims rendered judgment for claimant.

The case is of great importance, and an early decision is earnestly desired by the Treasury officials, because of the large number of estates throughout the United States, where the same situation exists. These estates can not be settled properly until this question is finally decided. The Government refusing to allow the deduction here claimed, has collected large sums of money, paid under protest, and every reason exists, both on behalf of the public and the officials charged with the execution of the revenue laws, to justify the request that this case be heard before the adjournment of the present term of this honorable court.

Opposing counsel has authorized the Solicitor General to state that he joins in the request to advance this case.

WILLIAM L. FRIERSON,
Solicitor General.
FRANK DAVIS, Jr.,
Special Assistant to the Attorney General.

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AUTHORITIES CITED.

In the Supreme Court of the United States.

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THE UNITED STATES, APPELLANT.
v.
ALAN H. WOODWARD, OSCAR W. UNDERWOOD, and Reginald H. Banister, in their capacity as executors of Joseph H. Woodward, deceased, appellees. } No. 811.

APPEAL FROM THE COURT OF CLAIMS OF THE UNITED STATES.

BRIEF FOR THE UNITED STATES.

This is an appeal from a judgment of the Court of Claims in favor of the executors of Joseph H. Woodward for $165,075.18, being the amount paid by them under protest as taxes on the income for the year 1919 of the estate in their hands.

THE FACTS.

Joseph H. Woodward, a citizen and resident of Alabama, died on December 15, 1917. He left a will by which, after making certain specific legacies, he devised all the remainder of his estate to a trust company, as trustee, for the benefit of members of his family, and directed his executors to turn this over to the trustee as soon as practicable. On

February 8, 1919, the executors paid the so-called estate tax imposed by the revenue act of 1916, as amended. The amount so paid was $489,834.07. In March, 1919, the executors made an income tax return and reported the income received by them for the estate prior to December 21, 1918. The will had been probated and the executors qualified on December 21, 1917. They appear, therefore, to have included in this return the income received during a period of one year following their qualifications. It is conceded that the amount of income tax due on this return was $165,075.78, unless the executors were entitled to a deduction claimed by them but denied by the Commissioner of Internal Revenue. Their claim was that they were entitled to deduct from any income reported the amount paid by them as the estate tax. Since this amounted to more than the tax on the entire income as reported, their claim is that no income tax could properly be collected from them for the year in question.

Having taken the steps necessary to entitle them to sue, they commenced this suit to recover the amount paid, and the Court of Claims rendered judgment in their favor.

STATUTES INVOLVED.

The estate tax was imposed by the Act of September 8, 1916 (39 Stat., c. 463, Title II, section 201, p. 777), as amended by two acts enacted in 1917. Section 201 of the Act of 1916 imposed a graded tax upon the transfer of the net estate of decedents in excess of $50,000, the rate ranging from 1 per centum to 10

per centum, according to the amount of the estate. That section is as follows:

> That a tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate, to be determined as provided in section 203, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this act, whether a resident or nonresident of the United States:
>
> One per centum of the amount of such net estate not in excess of $50,000;
>
> * * * * *
>
> Five per centum of the amount by which such net estate exceeds $450,000 and does not exceed $1,000,000;
>
> * * * * *
>
> Ten per centum of the amount by which such net estate exceeds $5,000,000.

Section 202 provides that there shall be included, for the purposes of the act, in the value of the gross estate, among other things, any property—

> of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth.

Section 203 provides that, for the purposes of the tax, the value of the net estate shall be determined by deducting from the value of the gross estate debts, funeral expenses, administration expenses,

losses incurred during the settlement of the estate arising from certain specified causes, and such other charges against the estate as are allowed by the laws of the jurisdiction under which the estate is to be administered, and a specific exemption of $50,000.

Section 204 provides that the tax shall be due one year after the decedent's death. If paid earlier, a discount is allowed. If not paid within 90 days after it is due, interest at the rate of 10 per centum is charged unless, because of unavoidable delay in administration, the collector finds that the tax can not be determined, in which case interest is charged at 6 per centum.

Section 205 requires the executor, within 30 days after qualifying, to give written notice of his qualification to the collector, and thereafter, at such times as may be required by the regulations, to make returns showing the value of the gross estate, the deductions allowed, and the value of the net estate.

By other provisions of the act the collector is authorized to commence appropriate proceedings if the tax is not paid as required, that the tax shall be a lien on the gross estate, except such part as is used for the payment of charges against the estate and the expenses of administration for a period of 10 years, with the provision that—

> If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed

> or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. (Sec. 208.)

The Act of 1916 was amended by the Act of March 3, 1917 (39 Stat., chap. 159, Title III, sec. 300, p. 1002.) The amendment, however, related only to the rate of taxation, which was increased, so that it ranged from 1½ per centum of the amount not in excess of $50,000 to 15 per centum of the amount in excess of $5,000,000. The Act of 1916 was further amended by the Act of October 3, 1917. (40 Stat., c. 63, Title IX, sec. 900, p. 324.) This amendment was accomplished by imposing, in addition to the tax imposed by the previous acts, an additional tax ranging from one-half of 1 per centum of the amount of estates not in excess of $50,000 to 10 per centum of the amount in excess of $10,000,000. These are the acts which were in force when Joseph H. Woodward died. Together, they impose on net estates of decedents a tax ranging from 2 per centum of the amount of such estates not in excess of $50,000 to 25 per centum of the amount by which such estates exceed $10,000,000.

The other act which it is necessary to consider is the Income Tax Act of February 24, 1919 (40 Stat., chap. 18, Title II, Part II, sec. 214, p. 1066), being the act by which the income taxes for the year 1918 are determined. That act, in section 210, in lieu of the income taxes imposed by previous acts, imposes upon the net income of every individual, for the year 1918, a tax upon the amount of the net income in excess of certain credits provided for in section 216 of the same act, but which need not be referred to now, and in section 211 imposed a graded surtax upon such net income ranging from 1 per centum of the amount by which the net income exceeds $5,000 and does not exceed $6,000, to 65 per centum of the amount by which the net income exceeds $1,000,000. By section 214 of the same act it is provided that in computing net income certain deductions shall be made from the gross income. Among these is the following:

> Taxes paid or accrued within the taxable year imposed (a) by the authority of the United States, except income, war-profits, and excess-profits taxes; * * *.

The particular section under which the executors in this case were required to report and pay an income tax is section 219, which imposes upon estates or property held in trust the same taxes which the sections already quoted imposed upon individuals, as follows:

> That the tax imposed by sections 210 and 211 shall apply to the income of

estates or of any kind of property held in trust, including—

(1) Income received by estates of deceased persons during the period of administration or settlement of the estate;

(2) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(3) Income held for future distribution under the terms of the will or trust; and

(4) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant to be held or distributed as the court may direct.

Continuing, this section requires the fiduciary to make the return of income for the estate or trust for which he acts and that—

> The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212—

with certain exceptions not now necessary to be mentioned. In addition, it is provided by said section that the tax imposed upon the net income of the estate or trust shall be paid by the fiduciary "except that in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income properly paid or credited to any legatee, heir, or other beneficiary," and that in computing the net income of each beneficiary there shall be included "his distributive share, whether distributed or not, of the net income of the estate or trust for the taxable year."

It has been stated above that the income reported by the executors for the year 1918 was that collected up to December 21, 1918, or the expiration of one year from the granting of letters testamentary. This is probably due to the provision of the Alabama law under which one year is allowed from the granting of "letters to a personal representative" within which claims can be presented against the estate, and until after the lapse of this year there can be no enforced distribution by an heir or enforced payment of any legacy or bequest. (Code of Alabama (Civil), 1907, vol. 2, secs. 2590, 2736, 2803, 3754, 3763.) Presumably, if any income was collected by the executors after that date, they treated it as income to which the trustee under the residuary clause was entitled, and hence taxable as the income of the trustee, on which the executors were not required to pay the tax.

THE ISSUE.

The claim of the executors, which was sustained by the Court of Claims, is that, under the provision quoted above, they were entitled to deduct from gross income for 1918 the so-called estate tax paid by them in February, 1919.

The question is whether a tax imposed upon the transmission of property from the dead to the living, which the statute imposed upon the death of Woodward, in December, 1917, can be deducted for the purposes of the income tax required to be paid by his executors on the income of this estate for the year 1918.

BRIEF.

I.

The "estate tax" in question is imposed upon the transfer of property from the dead to the living and belongs to the general class of excises known as death duties.

There can be no misunderstanding the general nature of the so-called estate tax. It is, in express terms, "imposed upon the transfer of the net estate of every decedent dying after the passage of this act." The discussion of the law with respect to taxes of this kind in *Knowlton* v. *Moore*, 178 U. S. 41, is exhaustive and leaves but little to be said. It was said at page 47:

> Taxes of this general character are universally deemed to relate, not to property *eo nomine*, but to its passage by will or by descent in cases of intestacy, as distinguished from taxes imposed on property, real or personal as such, because of its ownership and possession. In other words, the public contribution which death duties exact is predicated on the passing of property as the result of death, as distinct from a tax on property disassociated from its transmission or receipt by will, or as the result of intestacy.

It was accordingly held that such a tax was not a direct tax but was an excise tax, resting upon the transmission of property from the living to the dead. In that case one of the questions involved was, whether the tax was a legacy tax or an estate tax; that is, whether it was directly imposed upon the right of

the legatee to receive or upon the right of the decedent to transmit. But, preliminary to a decision of this question, the court found it necessary to examine carefully into the nature of all such taxes and, after a most thorough historical review of the subject, Mr. Justice White summed up concisely the general nature of all death duties in this language:

> Thus, looking over the whole field, and considering death duties in the order in which we have reviewed them, that is, in the Roman and ancient law, in that of modern France, Germany, and other continental countries, in England and those of her colonies where such laws have been enacted, in the legislation of the United States and the several States of the Union, the following appears: Although different modes of assessing such duties prevail, and although they have different accidental names, such as probate duties, stamp duties, taxes on the transaction, or the act of passing of an estate or a succession, legacy taxes, estate taxes, or privilege taxes, nevertheless tax laws of this nature in all countries rest in their essence upon the principle that death is the generating source from which the particular taxing power takes its being, and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested. (Id., pp. 55–56.)

In other words, whenever a tax is imposed upon the transmission of or the power to transmit property from the dead to the living it is a tax falling within the general class of death duties.

In the present case the tax is, as stated, in terms on the transmission or transfer of the property of decedents. There can be no doubt, therefore, that it belongs to the class of taxes known as death duties.

II.

The only essential difference between an estate tax and a legacy or succession tax is that the former is imposed upon the right to transmit and is taken out of what the decedent has to transmit, while the latter is imposed upon the right to receive and is taken out of what the beneficiary would otherwise get.

As shown above, every death duty, whether in the form of an estate tax or a legacy or succession tax, is, in fact, imposed upon the transmission of property from the dead to the living. The transmission of property necessarily includes the right of one to transmit and of another to receive. Whether a death duty, therefore, is an estate or a legacy tax depends upon whether, in the manner in which it is imposed, it bears directly upon the right to transmit or the right to receive. In the former case it must be taken out of what the decedent has to transmit before it can be ascertained what the beneficiary is entitled to receive. In the latter case the right of the decedent to transmit is not taxed and all that he has the right to transmit is permitted to pass from him, but in the act of passing the Government diminishes what the beneficiary has the right to receive to the extent of the tax. This distinction is made clear in *Knowlton* v. *Moore*, *supra*. In general, a tax on the right to receive, such as a legacy or inheritance tax, may be termed a succession duty,

and in *Knowlton* v. *Moore*, at page 48, the court quoted the definition of such a tax from Hanson's Death Duties as follows:

> Succession duty is a tax placed on the gratuitous acquisition of property which passes on the death of any person, by means of a transfer (called either a disposition or a devolution) from one person (called the predecessor) to another person (called the successor).

And referring again to Hanson's discussion of the English Finance Act of 1894, which imposed an *estate duty*, this was quoted:

> The new duty imposed by the Finance Act, and called estate duty, as has been said above, supersedes probate duty; but the key to the construction of the Finance Act lies in remembering that the new estate duty, although it is leviable on property which was left untouched by probate duty, such as real estate, yet is in substance of the same nature as the old probate duty. What it taxes is not the interest to which some person succeeds on a death, but the interest which ceased by reason of the death. Unless this principle is kept clearly in view, the mind is constantly tempted by the wording of the act to revert to principles of succession duty which have no real connection with the subject. (Id. 49.)

And at page 51, after a review of American legislation, it was said:

> Thus it came to pass that the system of death duties prevailing in England and that

adopted by Congress—leaving out of view the differences in rates and the administrative provisions—were substantially identical and of a threefold nature—that is, a probate duty charged upon the whole estate, a legacy duty charged upon each legacy or distributive share of personalty, and a succession duty charged against each interest in real property.

III.

The right of the Federal Government to impose death duties does not rest upon any power to regulate the descent or distribution of property, but rests on the independent general power to tax.

The Court of Claims apparently gave some weight to the fact that the Federal Government has no power to regulate the descent and distribution of property. It is difficult to see, however, upon what theory the undoubted fact that the States have the exclusive power to regulate the devolution of property upon death is, in any way, a bar to the levying of death duties by the Federal Government, in view of the decisions of this court in *United States* v. *Perkins*, 163 U. S. 625; *Knowlton* v. *Moore*, 178 U. S. 41; *Plummer* v. *Coler*, 178 U. S. 115; and *Snyder* v. *Bettman*, 190 U. S. 249. In the case last cited the court unmistakably disposed of that question as follows:

> The case is to a certain extent the converse of those of the *United States* v. *Perkins*, 163 U. S. 625, and *Plummer* v. *Coler*, 178 U. S. 115. In the first of these we held it to be within the competency of the State of New York to impose a similar tax upon a bequest to the

Federal Government, incidentally deciding (1) that the inheritance tax of the State was "in reality a limitation upon the power of a testator to bequeath his property to whom he pleases; a declaration that, in the exercise of that power, he shall contribute a certain percentage for the public use;" and (2) that the tax was not a tax upon the property itself, but upon its transmission by will or descent. In *Plummer* v. *Coler* we held the incidental fact that the property bequeathed is composed in whole or in part of Federal securities, did not invalidate the State tax or the law under which it was imposed, although it was accepted as undeniable that the State could not, in the exercise of the power of taxation, tax obligations of the United States, and, correlatively, that bonds issued by a State, or under its authority by its municipal bodies, were not taxable by the United States.

It is insisted, however, that the case under consideration is distinguished from those above cited, in the fact that the inheritance tax of New York was but a condition annexed to the power of a testator to dispose of his property by will, and that such power, being purely statutory, the State has the right to annex such conditions to it as it pleases. The case, then, really resolves itself into the question whether the authority to lay a succession tax arises solely from the power to regulate the descent of property, or, as well from the independent general power to tax, or, as expressed in the Constitution, Article I, section 8, "to lay and collect taxes, duties, imposts, and excises." The difficulty with this proposition

of the plaintiff is that it proves too much. If it be true that the right to impose such taxes arises solely from the right to regulate successions, then a denial of such right goes to the whole power of the Government to impose a succession tax, irrespective of the question whether the legacy is made to a private individual or to an agent of the State, and the cases in this court upholding the power of the Federal Government to lay such tax were wrongly decided. (Id., p. 250.)

IV.

A legacy or succession tax being imposed on the transmission of property from the dead, is a toll taken from the property transferred before it reaches the beneficiary and is no part of that which the beneficiary has the right to receive.

That a succession or inheritance tax is not a tax upon the property received by the beneficiary, but is an amount taken out of what passed from the decedent which diminishes, to that extent, the amount which the beneficiary would otherwise be entitled to receive has been too often decided by this court to admit of controversy. In *United States* v. *Perkins*, 163 U. S. 625, in holding that the State of New York could impose a legacy tax upon a legacy to the United States, it was said:

> Thus the tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee. (Id., p. 628.)

In *Plummer* v. *Coler*, 178 U. S. 115, the same rule was applied in sustaining the transfer law of the State of New York as applied to an estate consisting, in whole or in part, of Federal securities.

The effect of a tax on the right to receive property from the dead is to diminish the amount which would otherwise have been received. The entire estate passes from the decedent, but before it reaches the ultimate beneficiary the Government takes out its tax or toll, and hence the rights of the beneficiaries attach only to that which is left after taking out the tax.

V.

An estate tax being likewise imposed on the transmission of property from the dead, but being laid immediately on the right to transmit and not on the right to receive, is a toll taken from the property before it passes from the decedent and is no part of that which passes to the personal representative for the payment of debts and distribution.

As shown above, an estate tax equally with the legacy or succession tax is imposed upon the transmission of property from the dead. The only difference is that the latter is laid more immediately on the right to receive while the former is laid on the right to transmit. The principle, however, is the same in both cases. In each the Government takes its toll. In one case this toll is taken after the entire estate passes from the decedent but before it reaches the beneficiary; in the other the toll is taken before the estate passes from the decedent. In one case the tax diminishes that which the beneficiary would other-

wise receive; in the other it diminishes that which the decedent has the right to transmit. There is, therefore, upon the death of one owning property, a transfer to those entitled under the will or the law of only the value of the estate after it has been diminished to the extent of the estate tax.

While this court has held expressly that the effect of a legacy tax is to reduce that which the legatee is entitled to receive to the extent of the tax, and that this reduction occurs immediately upon the death of the decedent, it has not heretofore been called on to determine the same question as applied to the estate tax. Since, however, it is the same character of tax in each case and since, in both, the tax is imposed upon the happening of the same event and upon the same thing—the transfer of property from the dead to the living—it is difficult to discern any difference in principle between the two cases. The State courts which have been called on to consider the Federal estate tax have quite generally taken the view that the effect of the tax is to diminish, at the moment of death, the amount of the estate which passes from the decedent. In *People* v. *Bemis* (Colo.), 189 Pac. 32, speaking of this tax, after calling attention to the fact that it is "imposed upon the transfer of net estate," it was said:

> Therefore it is the power to transfer upon death that is taxed by the national law, and the estate, upon the death, is, to the extent of the tax, instantly depleted (In re Sherman, 179 App. Div. 497, 166 N. Y. Supp. 19, 22;

> U. S. *v.* Perkins, 163 U. S. 625, 630, 16 Sup. Ct. 1073, 41 L. Ed. 287), and, thus diminished, goes to the legatees.

The statement just quoted to the effect that it is upon the death of the decedent that the estate is instantly depleted or diminished to the extent of the tax, most accurately portrays the intent of the law. When one dies the Government takes its toll out of what he leaves. This being done, the remainder passes to his personal representative or to his heirs, or to such persons as may be designated by his will. In other words, whoever succeeds to his rights does not succeed to the entire estate which he owned before his death, but only that estate after it has been diminished by the amount of the tax.

VI.

The practical result of the imposing of the estate tax.

As has been shown above, the theory of the estate tax is that it is a condition precedent to the right of a decedent to have his estate pass to his personal representative or to his ultimate beneficiaries. Without permitting the estate to first pass, the Government exacts a contribution in the way of a tax. In theory it is only after this tax is paid that anything passes. What does pass, at last, is the difference between the value of the estate and the contribution exacted by the Government. Congress might, if it had seen fit, have made this tax payable immediately upon the death of the decedent and thus have required it to be actually taken out of the estate which

would then be received by the personal representative after being thus diminished. But to have done this would have been to impose unnecessary hardship and inconvenience. Ordinarily there would not be sufficient cash on hand to pay the full amount of the tax. Practically, before it can be paid, either the money must be borrowed or some of the assets of the estate converted into cash. Very naturally Congress would be loath to prescribe such rigorous provisions for the collection of the tax as might frequently not only result in inconvenience but necessitate a sacrifice of assets. The obvious thing to do was to make such regulations as would, to the least possible extent, interfere with the orderly administration of estates. If the ultimate collection of the tax within a reasonable time could be made secure, there was no reason for the Government demanding immediate payment, and thus occasioning unnecessary hardship. Congress, therefore, refrained from requiring either the personal representative or the beneficiaries to pay the tax before taking charge of the estate. Instead, it made the tax secure by declaring it to be a lien on the entire estate and permitted the administration of the estate to proceed. Having done this, it did not make the tax payable until one year after the death. It had, however, imposed the tax in such a form that legally a given per cent of the value of the estate became, immediately upon the death, the property of the Government. Since the amount it was thus entitled to withhold from the personal representative or beneficiary could not at once be ascertained, it

permitted the control of the entire estate to pass. Having done this, it appointed the executor or administrator its agent to collect and remit the amount due to it. In the meantime, to make the final payment secure, it constituted the obligation to pay this amount an encumbrance upon the entire estate. In effect, therefore, what passes to the personal representative or the beneficiary is an equity in the estate equal to the difference between the value of the entire estate and the amount of the tax.

It should be borne in mind that the tax is measured by the value of the estate which the testator has the right to transmit to beneficiaries at the time of his death and also of property which he has previously transferred by conveyance to take effect at his death. The tax, therefore, is measured by the value of all property so passing, whether it passes directly into the possession of the beneficiary by will or previously executed deed or first passes through the hands of an executor or an administrator. It is the right to transmit which is taxed, and the tax must be paid regardless of the particular method by which the transfer is made. Ordinarily real estate passes directly to the heir or devisee, while personal property passes to the personal representative and through him finally reaches the beneficiary. To illustrate the working of the law, we may suppose a simple case. A man dies intestate the owner of a large estate, consisting exclusively of real estate, leaving but a single heir and a number of debts. The title to his property passes directly to the heir, subject, of course, to the

rights of creditors. What the heir really receives is an equity in the property measured by the difference between its value and the amount of the indebtedness to which it is subject. If he chooses, he may pay off the indebtedness, and thus become the owner of the entire property. What has passed to him, however, by the death of the decedent is still the difference between the value of the property and the indebtedness which he has seen fit to pay. The remainder of the property he has, in fact, acquired by purchase. The Federal Government, however, has imposed a transfer tax which still further reduces the value of his equity. Again he may, if he chooses, pay this in order to keep the property intact. In that event there will have passed from the decedent an estate the value of which was the difference between the value of the property and the indebtedness to which it was subject; but, in the act of passing, this value has been diminished to the extent of the Federal estate tax, and when it reaches the heir it is what the decedent owned less the amount which the Government withheld as a condition precedent to the transfer or transmission of the property. So much of the property as represents the amount thus withheld by the Government has been acquired, through the payment of the tax, not from the decedent, but by purchase from the Government. The Government does not require him to pay the tax immediately, but permits him to take charge of the property and allows him a reasonable time within which to purchase the interest it has withheld by paying the tax.

In another case it may be supposed that the entire estate consists of personal property or that there is a will under which all of the estate passes to the executor. In that case what the decedent is permitted to pass to his personal representative is what is left of his property after the Government has taken out its toll or tax. Since this ordinarily can not, with convenience, be taken before the personal representative has taken charge of the estate, he is permitted to take charge of the entire estate subject to the rights of the Government. He is in effect made the agent of the Government to see that the contribution which the Government has exacted is finally separated from the estate and paid over to it. The executor or administrator, therefore, acts in a dual capacity. He is the representative of the decedent for the purpose of administering the estate and distributing it among the beneficiaries. At the same time, he is the agent of the Government for the collection of its tax. The faithful discharge of his duty as personal representative is secured by his bond; the faithful discharge of his duty as agent of the Federal Government is secured by a lien on the estate. He proceeds with the administration. Before, however, paying debts and distributing the estate, he segregates the part which belongs to the Government and proceeds as personal representative to administer the balance.

It would seem to be clear beyond any doubt that the estate tax is not a tax which accrues against or is assessed against an estate in process of adminis-

tration. Rather it is a tax which the law imposes, with provisions to secure its payment, upon the happening of an event which occurs before administration begins. It is, in fact, finally paid by the person who happens to be executor or administrator. It is not, however, paid by him on behalf of the estate which he is administering. It is paid because the Government has laid its hand on that much of the estate which would otherwise be subject to administration and because the Government has permitted him to retain it until it can conveniently be withdrawn from the estate which the decedent owned. It certainly is not a tax assessed against an estate or any kind of property held in trust. It is a tax imposed upon a right—the transmission of property—which necessarily was exercised before any of the property in question became subject to any trust. It was a tax imposed upon the happening of an event—a death—which of course preceded the existence of any trust for the administration of the property or estate in question.

VII.

While the effect of the estate tax is to deplete the estate which the decedent owned before it becomes the estate for administration, the result of the Government's delay in collecting is to give the ultimate beneficiaries the benefit, during administration, of income derived, in part, from what became the property of the Government upon the death of the decedent.

It is true that the personal representative, in fact, may take charge of all the estate of which the dece-

dent died the owner, including that part which the law requires to be taken out as an estate tax. This is a practical necessity unless the Government should require the tax to be actually paid before administration begins. The hardship and injustice of this is inevitable and, therefore, Congress, after making provision to secure ultimate payment, has left the parties in interest free, during a reasonable time, to so shape the affairs of the estate as to enable them to reduce the Government's share to cash without unnecessary hardship. This, however, is not at all inconsistent with the idea that the executor actually receives for administration the estate depleted to the extent of the tax. Since the executor may take charge of the entire estate, he will, prior to the payment of the tax, often receive income from property belonging, in part, to the Government. Congress might, if it had seen fit, have required that, in addition to the specific tax imposed, the executor should account to the Government for a share of the income in proportion to the Government's share of the property. This has not been done. On the contrary, if paid within a given time, only the amount of the tax is paid, even without interest. The result is that, prior to the payment of the tax, the beneficiaries of the estate get the benefit directly or indirectly of the entire income. This results merely from the fact that the executor is allowed to manage the Government's part of the decedent's property until it can, with advantage to all parties in interest, be definitely separated from the estate which goes

into the hands of the executor for administration. Whether this was because it was thought proper to allow the estate the use of the Government's property in return for service in reducing it to cash, or whatever the reason, the estate actually receives and enjoys the income.

VIII.

The income tax, as applied to estates, is not a tax on the executor but is directly imposed on the income of property held in trust and is limited to such income as is received and becomes a part of the trust estate.

In this case, the executors having paid the estate tax in February, 1919, made their report in March, 1919, of the income for the year 1918 of the estate then in course of administration. In this return, they claimed the right, which they are now claiming, to deduct the estate tax so paid from the taxable income for the year 1918. It becomes important, therefore, to consider the nature of the income tax as applied to estates. The revenue act providing income taxes for the year 1918 is found in the act of February 24, 1919 (40 Stat., ch. 18, Title II, part 2, section 214 et seq., p. 1066 et seq.). This act under the heading "Part II.—Individuals," imposes, beginning at section 210, a normal tax and a graded surtax on the net income of all individuals. The imposition of the tax is followed by sections providing that net income, in the case of individuals, shall mean the gross income less certain deductions expressly provided. This is followed by provisions for

ascertaining the gross income and by an enumeration of the deductions to be allowed. These and other provisions expressly applying to individuals are followed by section 219 which provides that the normal and surtaxes above mentioned "shall apply to the income of estates or of any kind of property held in trust," including among other things "income received by estates of deceased persons during the period of administration or settlement of the estate." It will be seen that the tax is not imposed directly upon the executor but is imposed on the income of the property in his hands for administration. He is required, by subsection B of section 219, to make the return and, by subsection C, to pay the tax except as will be hereinafter noted. By the language that he shall make "the return of income for the estate or trust for which he acts," and that "the tax shall be imposed upon the net income of the estate or trust and shall be paid by the fiduciary," in applying the income tax to the income of estates, Congress was evidently moved by the consideration that during the period of administration it would often happen that income producing property would be under the control of the personal representative who would receive the income and, that, not being received by any person against whom an income tax has been provided, it would escape taxation. If collected by an executor or administrator the ultimate benefit would go to the beneficiaries of the estate. If used to pay debts of the estate or expenses of administration, the result would be to increase the amount

which would ultimately be distributed to beneficiaries.

The purpose, therefore, was to tax income which would not otherwise be included in the returns made by the beneficiaries who had not yet received it. It was recognized, however, that, under the terms of a will or in course of administration, it often happens that the income received by an executor or administrator is, in fact, distributed and paid to its ultimate owner. A will, for instance, may direct that all debts and expenses be paid out of money on hand at the time of decedent's death or that some of his property be sold to pay them and that, in the meantime, the income collected from the property of the estate shall be divided among the beneficiaries. In such cases, each beneficiary would receive his share of the income and it would be properly returnable by him. The purpose is clear not to require the executor to pay any tax on income so distributed but to leave it as a part of the taxable incomes of the separate beneficiaries. He is required to make a report of all such income which is of value to the Government in checking up the returns of the individual beneficiaries. Accordingly subsection C of section 219 expressly provides—

> that in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income properly paid or credited to any legatee, heir, or other beneficiary.

It will thus be seen that the tax is imposed upon the income of the estate and that it does not apply to all income which may be received by the executor or administrator, but only to such part thereof as is not so distributed by him as to become a part of the taxable incomes of the beneficiaries.

IX.

While, with certain exceptions, taxes paid are to be deducted from taxable income, in order to entitle a taxpayer to deduct such taxes they must be paid in discharge of a tax obligation against him.

Subsection B of section 219 provides that the net income of an estate shall be computed in the same manner and on the same basis as provided in section 212, with certain exceptions not now necessary to notice. Section 212 is the section which provides that net income means the gross income less deductions allowed by section 214. Among the deductions allowed by section 214 is—

> Taxes paid or accrued within the taxable year imposed (*a*) by the authority of the United States, except income, war profits, and excess profits taxes. * * *

This is the language which it is claimed authorizes the deduction in this case. Manifestly, in the case of a particular taxpayer, this means taxes paid, as taxes, and in discharge of a tax obligation resting upon that particular taxpayer. The amount paid by a given person by which a tax obligation or a tax lien is discharged does not constitute the paying of taxes by that person unless the payment is made in discharge

of an obligation which such person owed to the Government to pay such taxes. If they are taxes assessed against one person and paid by another in discharge of an obligation which the latter owes to the former, the latter has not in reality paid taxes but has discharged a private obligation. To illustrate: A purchases from B a tract of land which is subject to a lien for unpaid taxes. As a part of the consideration he obligates himself to pay the taxes. In other words, as the price of the land, he agrees to pay one sum to the owner and another to the Government. The taxes have been paid. B has used a part of the value of his land to pay them. He would be, doubtless, entitled to deduct the amount of these taxes from his taxable income. But no one would say that A, who actually paid them, but only on account of his obligation to B, would be entitled to deduct them from his income.

Again, a tenant agrees to pay a stipulated rent and in addition all such taxes as may be assessed against his landlord as the owner of the property. Whatever the amount of the taxes may be, he pays it as a part of the rent. The landlord, in legal effect, receives it as a part of the rent and applies it to the payment of taxes, which he was bound to pay. There can be no difference of opinion as to which of these men would be entitled to claim a deduction from his income.

The determinative question under the statute is not whether a given amount has been used to pay taxes, but whether the party claiming the deduction

was bound to pay them as taxes or only paid them in discharge of some other obligation.

X.

The living person and his estate after his death are subject to the same income tax, but the law clearly recognizes each as a separate and distinct taxpayer.

Speaking generally, the same income tax is imposed upon the estates of decedents during administration which is imposed upon living individuals. The act, however, treats a living person as a separate and distinct taxpayer from his estate after his death. The executor must pay taxes whether they accrued against the decedent in his lifetime or against the estate after his death. In the one case they are obligations or debts existing at the time of the death of the decedent. As a personal representative he must pay them just as he must pay any other debt. In the other case they are assessed against property under his control and accrue while the title to the property is in him. He must pay them just as he pays other expenses incurred by him in the course of administration. In imposing income taxes Congress has not seen fit to treat him as merely the continuation of his decedent. On the contrary, it has made the death of the decedent the dividing line. Otherwise it would have required of the executor for the calendar year in which the decedent died only one return of income, covering both the period when the decedent was living and the period during which the estate was in the course of administration. Instead,

however, it has required two reports. The executor must first make a report covering the income of the decedent up to the date of his death. In computing the tax on this return, he is entitled, of course, to every deduction that the decedent, if still living and making the report, would be entitled to. As between the decedent and the Government a final settlement then is made with respect to the tax on income up to the date of his death. This having been done, the executor is required to make a new start. For the remainder of the year he is required to render a return of all income received by the estate and to pay the tax on all of it that is not distributed so as to become a part of the income of other persons. When making a return of income received by the decedent before his death, it would scarcely be contended that he would be entitled to deduct taxes which were later assessed against the estate or against him as executor. For the same reason, when making the report of income received by him as executor, he can not claim a deduction for taxes which accrued against the decedent in his lifetime. In both cases, the deduction would be denied, because whatever payment of taxes had been made was made by one who paid them not as taxes but in discharge of some other obligation, and the real payment of taxes was by another taxpayer.

XI.

Looking at the two taxes together, the result is the Government collects a tax on the income accruing up to the moment of death. It then, at the instant of death, takes out of the estate a certain part as a transfer tax. It then begins anew and taxes all income which accrues to the estate after the deduction of the transfer tax.

As we have seen, the estate which passes to the executor for administration is what the decedent owned at the time of his death less the contribution which the Government exacted at that instant. The income which must thereafter be returned by the executor is the income which accrues to this depleted or diminished estate. No tax is levied or assessed against this estate which accrued before the depletion. If a tax accruing before that time is deductible from taxable income at all, the deduction must be made from the income accruing prior to the death of the decedent and which the executor is required to report separately for him. In this case the estate tax accrued at the death of Woodward in December, 1917. (*Hertz, Collector*, v. *Woodman*, 218 U. S. 205.) The executors were required to make two returns. They had first to make a return of the income which accrued to Woodward up to the time of his death and then another return of all income accruing to the estate after that date. Presumably they made both reports. The estate tax, having accrued prior to the beginning of the trust estate, can not be said to have accrued against it. If, therefore, it was deductible at all, the deduction must necessarily have been

made from income which accrued to Woodward in his lifetime.

When, however, we look at both taxes together, the result is obvious. The Government collects a tax on the income accruing up to the moment of the death. It then takes out of the estate, at the instant of death, a certain part as a transfer tax. What remains constitutes the estate, which the statute has made a new taxpayer. During the administration, this estate may get some benefit, by way of income, from that part of the decedent's property which, by the imposition of the estate tax, has become the property of the Government. But the estate which receives this income is still the estate as it was constituted after taking out the transfer or estate tax. There is no difficulty about the matter if we keep these facts clearly in mind. The Government settles with one taxpayer, or his representative, up to the time of his death. As a condition precedent, then, to the transmission of his property upon his death, the Government withdraws from it a certain part. After this withdrawal it treats the new owners of the estate which, in fact, passes as new taxpayers. If, under the terms of the will, the income accruing to these new taxpayers is not distributed during the administration, they are collectively treated as one taxpayer, and the executor is required to pay the tax for them. If any part of the income is distributed, it is excluded from the executor's return and included in the returns of those who received it.

The fact that separate returns are required, and separate taxes levied on income accruing before and income accruing after the death, can only mean that Congress was not willing to treat the income accruing during the entire year as the income of one taxpayer. The result is that the income taxpayer, with respect to that which accrued before the death, is an entirely different person from the income taxpayer as to that which accrued afterwards. The right to transmit the property and not the right to receive it was what Congress saw fit to tax. This right belonged to the taxpayer who was required to pay a tax on income accruing before the death. To say, therefore, that the new taxpayer, who pays tax only on income accruing after that date, is entitled to a deduction would be to allow one taxpayer a deduction for a tax assessed against another. Moreover, by making the estate tax accrue at the instant of death, Congress indicated a purpose not to allow this tax as a deduction at all. Obviously, the instant of death marks the interval between the two periods for which income returns are required. In that interval the estate tax is required to be taken out and is, in effect, paid. At any rate, it can not be said that it is, in any sense, a tax accruing against the new taxpayer who came into existence only after the estate had been depleted to the extent of the transfer tax.

XII.

The tax on the income of estates is plainly a tax on beneficiaries. When paid by the executor, it is paid for them. It is their incomes, either severally or collectively, upon which the tax rests. Taxes to be deductible must be their taxes, and the estate tax is not theirs.

As has been pointed out, the estate tax rests on the right of the decedent to transmit and not on the right of the beneficiaries to receive. In imposing this tax, Congress, being aware that it might be imposed either on the right to transmit or the right to receive, deliberately and upon careful consideration chose to impose it on the right to transmit. The reasons for this choice were stated in the report of the Committee on Ways and Means of the House on July 5, 1916, as follows:

> Thirty States have laws imposing inheritance or share taxes both upon direct and collateral heirs. Twelve other States have laws imposing inheritance taxes upon collateral heirs. Your committee deemed it advisable to recommend a Federal estate tax upon the transfer of the net estate rather than upon the shares passing to heirs and distributees or devisees and legatees.
>
> The Federal estate tax recommended forms a well-balanced system of inheritance taxation as between the Federal Government and the various States, and the same can be readily administered with less conflict than a tax based upon the shares. (House of Representatives Report 922, 64th Cong., 1st sess.)

The *Perkins Case, supra,* then, and other cases cited, fully establish that such a tax is not a tax on the beneficiaries.

It is equally clear that the tax imposed on the income of estates during administration is a tax upon the income of the beneficiaries. If any part of the income so received is paid or credited to particular beneficiaries, it is, by the express terms of the act, excluded from the income upon which the executor is to pay the tax and becomes taxable only as a part of the income of the beneficiary who receives it or to whom it is credited. It is only that portion of the income which is used to pay debts and expenses or for future distribution that the executor must report for taxation. If the will provides that all income, as received, shall be distributed to the beneficiaries, and that the funds necessary to pay debts and expenses shall be obtained by a sale of assets, there will be no income upon which the executor must pay taxes. If the income, however, is used to pay expenses and the obligations of the decedent, such payment inures to the benefit of the beneficiaries, because it preserves assets which ultimately belong to them, and which would otherwise have to be sold. In effect, their income is being used to redeem their property from debts to which it is subject and to purchase for them the interest in the decedent's property which the Government exacted at the time of his death. They are thus receiving the benefit of the income just as really as when it is distributed and paid to them severally.

It would, however, be difficult, if not entirely impracticable, to treat it as distributed and include a part of it in the taxable income of each beneficiary. Congress has, therefore, dealt with the beneficiaries collectively and treated them as one taxpayer, and made the executor who received the income and used it for them their paymaster. When he pays the tax, therefore, he is paying it for them and is paying their tax. Manifestly, a taxpayer, in computing his net income, when he comes to the deduction of taxes paid can only deduct his own taxes. The executor, then, in paying the income taxes of the beneficiaries can only deduct such taxes paid by him as were, in fact, the taxes of the beneficiaries. Since the estate tax is not a tax on the beneficiaries, it obviously can not be deducted from their taxable income.

The executor is paymaster for the estate tax as well as for the income tax. He pays the former, whether he uses or holds undistributed the income, and, therefore, pays the tax on it, or distributes the income and pays no income tax. If he distributes the income, the tax on it is paid by the beneficiaries. In that case, the beneficiary is allowed no credit or deduction for the estate tax paid by the executor. There is no difference in principle when the tax, which really falls on the beneficiary, is, for convenience, paid by the executor, and, at last, reduces, to that extent, the amount which the beneficiary receives. In any event, the income tax is, in reality, paid by or for the beneficiary. In neither case is the

estate tax paid either by or for him. The two taxes are entirely separate and distinct and impose the burden on different taxpayers.

The mere fact that the two taxes are each paid by the executor has no weight whatever in determining the nature of either tax or in ascertaining upon whom the burden really falls. As a matter of convenience a tax on the right to transmit and, on the other hand, a tax on the right to receive, are both usually required to be paid by the executor. Likewise, it has not been uncommon in income statutes to require the tax on certain kinds of income to be paid at the source—that is, requiring one person paying income to another to withhold the tax and pay it to the Government. The lack of significance to be properly attached to the fact that the executor pays a tax was well disposed of by District Judge Augustus N. Hand in *Prentiss* v. *Eisner*, 260 Fed., 589, in dealing with the claim of a taxpayer to a deduction on account of the New York transfer tax, as follows:

> It is argued that the personal liability of the executor or administrator under the New York law for the payment of the tax makes the view taken by the foregoing case [*In Matter of Gihon*, 169 N. Y. 443] erroneous; but, as Judge Cullen there said, the obligation of the executor or administrator to pay the tax is a mere rule of administration to insure its payment, and the imposition of such an obligation affords no proof that the tax is either on the right to transmit or upon the property itself. (Id., p. 590.)

XIII.

The practical effect of the judgment below is to make it unnecessary for an executor to pay any tax whatever upon the income of an estate of any considerable size.

The most obvious feature of both the estate tax and the income tax is the purpose of Congress to make the tax bear most heavily on large estates and incomes. Both are graded taxes, the rate of which increases rapidly as the estate or income increases.

In the case of the estate tax, estates not in excess of $50,000 are entirely exempt. The tax begins at that point at 2 per cent and gradually increases until the rate of 25 per cent is reached. As shown above, the first tax was imposed by the act of 1916 as amended by the act of March, 1917, and increased by an additional tax imposed by the act of October, 1917. For the purpose of the act, the net estate is taken as all in excess of $50,000. The combined estate tax imposed by the two acts is as follows:

The net estate not in excess of $50,000	2 per cent.
So much as is in excess of $50,000 but not in excess of $150,000	4 per cent.
So much as is in excess of $150,000 but not in excess of $250,000	6 per cent.
So much as is in excess of $250,000 but not in excess of $450,000	8 per cent.
So much as is in excess of $450,000 but not in excess of $1,000,000	10 per cent.
So much as is in excess of $1,000,000 but not in excess of $2,000,000	12 per cent.
So much as is in excess of $2,000,000 but not in excess of $3,000,000	14 per cent.

So much as is in excess of $3,000,000 but not in excess of $4,000,000 ..... 16 per cent.
So much as is in excess of $4,000,000 but not in excess of $5,000,000 ..... 18 per cent.
So much as is in excess of $5,000,000 but not in excess of $8,000,000 ..... 20 per cent.
So much as is in excess of $8,000,000 but not in excess of $10,000,000 ..... 22 per cent.
So much as is in excess of $10,000,000 ..... 25 per cent.

The following will illustrate the amounts actually paid on estates of various sizes:

If the value of the estate is less than $50,000, there is no net estate within the definition of the statute and there is no estate tax.

If the value of the estate is $100,000, the net estate is $50,000 and the tax is ..... $1,000 or 2 per cent.

If the net estate is $250,000, the tax will be as follows:

2 per cent of $50,000	$1,000	
4 per cent of $100,000	4,000	
6 per cent of $100,000	6,000	
		$11,000 or 4.4 per cent.

If the net estate is $500,000, the tax will be as follows:

On the first $250,000	$11,000	
8 per cent of $200,000	16,000	
10 per cent of $50,000	5,000	
		$32,000 or 6.4 per cent.

If the net estate is $1,000,000, the tax will be:

On the first $450,000	$27,000	
10 per cent of $550,000 ...	55,000	
		$82,000 or 8.2 per cent.

If the net estate is $20,000,000 the tax will be:

On the first $1,000,000	$82,000
12 per cent of $1,000,000	120,000
14 per cent of $1,000,000	140,000
16 per cent of $1,000,000	160,000
18 per cent of $1,000,000	180,000
20 per cent of $3,000,000	600,000
22 per cent of $2,000,000	440,000
25 per cent of $10,000,000	2,500,000
	$4,222,000 or 21+ per cent.

The income tax law just as clearly indicates a purpose to bear more heavily upon large incomes. There is a normal tax which, for the year 1918, was 6 per cent on the first $4,000 of the net income and 12 per cent on the remainder, and, in addition, a surtax ranging from 1 to 65 per cent. As in the case of small estates under the estate tax, so, in the case of small incomes, under the income tax law there is no tax, an exemption of $1,000 in the case of single persons and $2,000 in the case of married persons being allowed. Treating as the net income the amount left after deducting an exemption of $1,000, the actual working of the tax may be illustrated by the following statement:

On a taxable income of $4,000, there is no surtax but merely a normal tax of $240 or 6 per cent.

On a taxable income of $5,000 there is still no surtax and the tax is as follows:

6 per cent of $4,000	$240	
12 per cent of $1,000	120	
		$360 or 7.2 per cent.

On a taxable income of $6,000 the tax will be:		
6 per cent of $4,000	$240	
12 per cent of $2,000	240	
Surtax	10	
		$490 or 8+per cent.
On a taxable income of $10,000 the tax will be:		
6 per cent of $4,000	$240	
12 per cent of $6,000	720	
Surtax	110	
		$1,070 or 10+ per cent.
On a taxable income of $25,000 the tax will be:		
6 per cent of $4,000	$240	
12 per cent of $21,000	2,520	
Surtax	710	
		$3,470 or 14+ per cent.
On a taxable income of $50,000 the tax will be:		
6 per cent of $4,000	$240	
12 per cent of $46,000	5,520	
Surtax	5,510	
		$11,270 or 22 per cent.
On a taxable income of $1,000,000 the tax will be:		
6 per cent of $4,000	$240	
12 per cent of $996,000	119,520	
Surtax	593,510	
		$713,270 or 71+ per cent.

The figures above given may not be entirely accurate, but they are believed to be substantially correct. They, at least, constitute a fair illustration of the working of these tax laws. They certainly do not show any tenderness on the part of Congress in

favor of large estates as against small estates. And yet, if the judgment of the court below is correct, an estate of any considerable size can easily escape the payment of any income tax whatever during the period of administration, while very small estates must pay the tax on all income received.

Thus, an estate of less than $50,000 must pay a tax on its net income less an exemption of $1,000. The estate tax on an estate of the value of $100,000 is $1,000, as shown above. If it be assumed that in a given year, during the period of administration, such an estate produces an income of $5,000, its income tax will be $360. If, however, it is entitled to deduct from its income the $1,000 paid as an estate tax, it will pay an income tax on only $4,000, which will be $240.

If the value of the estate is $300,000, the estate tax must be based on $250,000 and will be $11,000. If, during a given year, this estate produces a taxable income of 5 per cent, or $15,000, the income tax will be $2,770. If however, the $11,000 paid as an estate tax is deducted from the income, the tax will be computed on the basis of only $4,000, and the tax paid will be $240.

If the value of an estate is $550,000, the tax will be $32,000. If it be supposed that it produces an income of 5 per cent, or $27,500, and the deduction of the $32,000 paid as an estate tax is allowed, the entire income will be wiped out and there will be no tax.

If the value of an estate is $1,050,000, the estate tax will be $82,000. If the income of the estate is $50,000, the deduction of the estate tax will again leave no taxable income.

If the value of an estate is $20,000,000, the estate tax will be $4,222,000. If the income of such an estate is 5 per cent, or $1,000,000, the income tax, as shown above, will be $713,270. If the estate tax is to be deducted from the income it will be sufficient, not only to wipe out all taxable income for one year, but more than sufficient to wipe out all such income for five years.

The result is that, according to the ruling of the court below, Congress has unconsciously inserted, in its tax system, an exemption of all estates of the value of something like $500,000 from income taxes for at least one year, although individuals enjoying the same incomes must pay the tax, and although smaller estates must pay a tax in proportion to their income.

If the estate is large enough, it can escape taxation altogether. The theory of the appellees is that a deduction may be allowed from the income either of the year in which the tax accrued or the year in which it was paid. Under the terms of the act, its payment can not be compelled for something over a year after the death of the decedent, and the time for payment may be extended even into another year. A sagacious executor, therefore, may, before the expiration of the year in which the decedent dies, pay enough of the inheritance tax to wipe out

the income for that year. He may, then, in the succeeding year, pay enough to wipe out the income for that year, and, if necessary, may repeat the operation the following year. Take, for instance, an estate of $20,000,000 on which the tax is $4,222,000, and the yearly income is $1,000,000. The executor knowing that, at the end of the first year, he must pay an income tax of $713,270, pays during that year $1,000,000 of the estate tax, and thus escapes the income tax. This leaves more than $3,000,000 of the estate tax still to be paid. During the next year he pays another million dollars of this and again escapes income tax. In the meantime, he has secured an extension of the time within which the remainder of the estate tax must be paid and carries that over into another year and avoids for the third time the payment of an income tax. At the end of the third year, or, if he has not secured an extension of time, at the end of the second year, he has the estate in such shape that he can, without inconvenience, distribute and pay over to the beneficiaries the income as it comes in. As income so distributed is not taxable to the estate, he has successfully saved the estate from paying any income taxes whatever.

In the present case the estate tax was nearly three times the amount of the yearly income. Apparently, however, the executors have managed so that the estate will be subject to income tax for only one year, and, if the judgment in this case is affirmed, have avoided paying anything for that year. The will provided that the executors should, as soon as

practicable, transfer the estate from which this income was derived to the trustee, who was to take it for the benefit of the members of the family of the decedent. Under the law of Alabama, the executors had one year from their appointment within which they could not be required to pay over any legacies. The estate, of course, was amply solvent. The findings of fact show that the income they collected and reported was all collected prior to December 21, 1918, which was just one year after their appointment. Why this was true does not distinctly appear. The only fair presumption is that, by that time, the estate was in such condition that either the executors were ready to turn it over to the trustee or to pay to the trustee such income as was received thereafter. Income so received and distributed or paid out would not, as above shown, be income upon which the executors would be required to pay an income tax. If, therefore, the judgment is affirmed, this estate has successfully avoided the payment of the income tax imposed by Congress and which much smaller estates have been compelled to pay in whole or in part. In view of the thoroughly settled policy of Congress to discriminate in favor of the smaller rather than the larger taxpayer, it is inconceivable that there was a purpose, in this particular instance, to reverse the whole policy and make a discrimination in favor of the larger taxpayer. Such a conclusion ought not to be reached unless the language employed by Congress makes it unavoidable.

XIV.

In this case, the estate tax accrued in 1917 and was paid in 1919. Hence, if otherwise deductible, it could not, by the very terms of the act, be deducted from the income for 1918.

Regardless of whether the argument thus far made is sound or unsound, the judgment in this case ought not to be affirmed. If the estate tax is a tax which Congress intended should be deducted from the income of the estate, in order to be deducted it must come within the class of taxes described in the act. The only taxes allowed to be deducted are: "Taxes paid or accrued within the taxable year." The tax in question is a death duty. A death duty accrues at the moment of the death, which is the occasion for its imposition. This was expressly decided in *Hertz* v. *Woodman*, 218 U. S. 205, where, in speaking of an inheritance or succession tax imposed by the act of 1898, Mr. Justice Lurton said:

> But the liability for the payment of the tax exacted under section 29 of the act of of June 13, 1898, accrued or arose the moment the right of succession by death passed to the defendants in error, and the occurrence of no other fact or event was essential to the imposition of a liability for the statutory tax upon the interest thus acquired. (Id., p. 220.)

In this case, this tax, which accrued in December, 1917, was not paid until February, 1919. To be deductible, the act requires that it must either have accrued or been paid during the year for which the

income from which it is deducted is taxed. The utmost that can be claimed, therefore, is that it is a tax which was deductible from the income of either 1917 or 1919. It is sought, however, to deduct it from the income of 1918. It neither accrued nor was paid during that year, and hence, in no possible view of the case, is it deductible.

CONCLUSION.

The argument contained in this brief is little more than an elaboration of the views expressed by Acting Attorney General Ames in an opinion given to the Secretary of the Treasury on April 10, 1920 (32 Op. A. G., 167). This opinion, together with such parts of the revenue acts as are deemed material, is printed as an appendix to this brief.

It is respectfully submitted that, for the reasons above stated, the judgment of the Court of Claims is erroneous and should be reversed.

WILLIAM L. FRIERSON,
Solicitor General.

FRANK DAVIS, Jr.
Special Assistant to the Attorney General.

APRIL, 1921.

APPENDIX.

OPINION OF ACTING ATTORNEY GENERAL C. B. AMES.

ESTATE TAX NOT DEDUCTIBLE FROM INCOME TAX.

The Federal estate tax is not deductible under the provisions of paragraph 3 of section 214 (a) of the Revenue Act of 1918 (40 Stat. 1067), in computing the income of estates of deceased persons for the purpose of taxes under the provisions of section 219 (a) of said Act (40 Stat. 1071).

DEPARTMENT OF JUSTICE,

April 10, 1920.

SIR: I have the honor to acknowledge receipt of the letter of your predecessor, dated January 15, 1920, requesting an opinion on the following question:

> Is the Federal estate tax deductible under the provisions of section 214 (a) (3) of the Act of February 24, 1919, in computing the income received by estates of deceased persons for the purpose of taxes under the provisions of section 219 (a)?

I have no hesitancy in answering this question in the negative. In so doing, the following provisions of the Revenue Act of February 24, 1919 (40 Stat. 1057), are involved:

Section 210 imposes upon the net income of individuals a normal tax for the year 1918 of 6 per cent on the first $4,000 and 12 per cent on the remainder. Section 211 imposes on the net income of individuals in excess of $5,000 an additional or surtax, which is graduated and ranges from 1 per cent of the amount by which the net income exceeds $5,000 and does not exceed $6,000 to 65 per cent of the amount by which the net income exceeds $1,000,000. Section 212 defines net income as what is left after making certain deductions from the gross income. Section 214 enumerates these deductions, the purpose of which is to arrive at the amount which represents the actual gain or profit of the individual during the tax year. Among these deductions is the following:

> Taxes paid or accrued within the taxable year imposed (*a*) by the authority of the United States, except income,

war-profits, and excess-profits taxes; or (*b*) by the authority of any of its possessions * * *; or (*c*) by the authority of any State or Territory * * *. (40 Stat. 1067.)

Section 219 (*a*) (40 Stat. 1071) is:

That the tax imposed by sections 210 and 211 shall apply to the income of estates or of any kind of property held in trust, including—

(1) Incomes received by estates of deceased persons during the period of administration or settlement of the estate;

* * * * *

Subsection (*b*) (40 Stat. 1071) provides that—

The fiduciary shall be responsible for making the return of net income for the estate or trust for which he acts. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212,

with one exception not material to the present question. Subsection (*c*) provides that the estate or trust shall, for the purpose of the normal tax, be allowed the same credits as are allowed to single persons under section 216—that is, an exemption of $1,000. It also provides that in determining the net income of an estate during the period of administration or settlement there may be deducted the amount of any income properly paid or credited to any legatee, heir, or beneficiary. The so-called estate tax is imposed by sections 400 et seq. Section 401 (40 Stat. 1096) is:

That * * * a tax equal to the sum of the following percentages of the value of the net estate * * * is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, * * *.

Section 403 provides for determining the amount of the net estate. In substance, all debts and expenses of administration are to be deducted, together with an exemption of $50,000, the remainder being the net estate as that term is used in the Act. The tax is 1 per centum of the amount of the net estate not in excess of $50,000, and gradually increases until it reaches 25 per centum of the amount by

which the net estate exceeds $10,000,000. By section 404 the executor is required to make returns of the estate upon which the tax is to be computed. Section 406 (40 Stat. 1099) is:

> That the tax shall be due one year after the decedent's death; but in any case where the Commissioner finds that payment of the tax within one year after the decedent's death would impose undue hardship upon the estate, he may grant an extension of time for the payment of the tax for a period not to exceed three years from the due date. If the tax is not paid within one year and 180 days after the decedent's death, interest at the rate of 6 per centum per annum from the expiration of one year after the decedent's death shall be added as part of the tax.

By other sections of the act the tax is made a lien upon the gross estate; but if collected out of property passing to any person other than the executor, it is provided that such person shall be entitled to reimbursement or to a just and equitable contribution by persons whose interest in the estate would have been reduced if the tax had been paid by the executor.

Section 400 (40 Stat. 1096) is, in part:

> The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent.

It is obvious that the result of the various sections above referred to is that every individual is liable for a tax on the net income accruing to him up to the moment of his death; that upon his death his estate passes to others, either directly or through an executor or administrator, but that in the act of passing it is diminished to the extent of the Federal estate tax; that the estate received by or for those succeeding to it is the estate which the decedent owned at the time of his death less the amount by which it has been diminished through the imposition of the tax on its transfer; and that the income derived from the estate thus diminished is the income which is subject to tax during the period of administration or settlement.

The inheritance tax is entirely separate and distinct from the income tax. In substance, the Government collects a tax on the income accruing up to the moment of death. It then takes out of the estate a certain part as a transfer tax. The remainder passes and becomes the estate, the income of which is taxable while it is being administered. When the estate passes into the possession of an executor, he holds in trust for the United States that portion which is required to be deducted as a transfer tax. The remainder is the estate which he holds in trust for creditors and beneficiaries, and the income of which is taxable. When he pays to the Government that which he has been holding in trust for it he pays nothing out of the estate the income of which is subject to tax. The law separates this part of the original estate from that part which is to be treated as the estate for purposes of income taxes.

The so-called estate tax is, in terms, imposed upon the transfer of the estate. It is not a tax upon the property but it is one of the form of taxes known as death duties. In *Knowlton* v. *Moore*, 178 U. S. 41, 56, speaking of taxes of this kind, it was said:

> Although different modes of assessing such duties prevail, and although they have different accidental names, such as probate duties, stamp duties, taxes on the transaction, or the act of passing of an estate or a succession, legacy taxes, estate taxes, or privilege taxes, nevertheless tax laws of this nature in all countries rest in their essence upon the principle that death is the generating source from which the particular taxing power takes its being and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested.

And speaking further of inheritance and legacy taxes the court, at page 54, quoted from *United States* v. *Perkins*, 163 U. S. 625, as follows:

> The tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee.

In the case last referred to it was held that an estate or transfer tax imposed by a State was valid when applied to a legacy to the United States Government, the court saying:

> The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest for it. (163 U. S. 630.)

In the present case the amount of the transfer tax is computed upon the net value of the estate passing, and it is expressly provided that it is collectible whether the property passes directly into the possession of the beneficiary or first passes through the hands of an executor or administrator. To illustrate we may take an extreme case. Suppose a man dies intestate the owner of a large estate consisting exclusively of real property and leaving but a single heir. The title to his property passes directly to the heir. What the heir really receives is an equity in the property measured by the difference between its value and the amount of indebtedness to which it is subject. If there is indebtedness, he may, if he chooses, pay it off and thus become the owner of the entire property. What has passed to him, however, by the death of the decedent is still the difference between the value of the property and the indebtedness which he has seen fit to pay. The Federal Government, however, has imposed a transfer tax which still further reduces the value of his equity. Again, he may, if he chooses, pay this in order to keep the property intact. In that event, there will have passed from the decedent an estate the value of which was the difference between the value of the property and the indebtedness to which it was subject. In the act of passing, however, this value has been diminished to the extent of the Federal estate tax, and when it reaches the heir it is what passed from the decedent less the amount of the estate tax. The heir, however, takes possession of the property immediately upon the death of the decedent, and from that moment receives the income arising from it. When it comes to making his income-tax report he does not include the value of the property received, but he does include all income derived from it. If he should claim the right to deduct the amount of the inheritance tax, the answer would

be that he has not, in fact, paid that tax but the law treated it as deducted from the estate before it reached him. Having been paid out of property which never came to or belonged to him, he can not fairly claim to have paid it or to be entitled to a deduction for it.

The same principle applies when the property of a decedent passes into the hands of an executor or administrator. The executor receives the income derived from the property under his control. Out of this he is entitled to deduct, with certain exceptions, taxes paid by him. It is in his capacity as the representative of those ultimately entitled to the estate that he is subject to income tax. By virtue of the Federal estate tax, he may be said to act in a dual capacity. He must first take possession of that part of the estate which the Government has reserved to itself as a transfer tax. As to this he takes possession for the Government, and his sole duty is to turn it over to the Government. What comes to his hands, as the representative of the beneficiaries of the estate, is what is left of the original estate after deducting this tax. When, therefore, he pays the estate tax, he does not pay it out of the estate which in his hands is subject to taxation, but simply delivers to the Government that which by law was taken out of the estate before it passed to him as the representative of the ultimate beneficiaries.

In a recent case before District Judge Augustus N. Hand (*Prentiss* v. *Eisner*, 260 Fed. 589, 590) the right was asserted to deduct from gross income the amount of transfer taxes imposed by the State of New York. The taxes in question were exactly like the Federal estate tax, and, as has been seen, taxes imposed by the State are deductible in the same way as those imposed by the Federal Government. Judge Hand, however, held that the transfer taxes in question were not deductible. In doing so he quoted from the case of *Matter of Swift*, 137 N. Y. 77, as follows:

> What has the State done, in effect, by the enactment of this tax law? It reaches out and appropriates for its use a portion of the property at the moment of its owner's decease, allowing only the balance to pass in the way directed by the testator, or permitted by its intestate law.

After quoting this, Judge Hand said:

> To say that the legatee, devisee, heir, or distributee received the property without any deduction and then pays the tax is really a most artificial way of viewing the transaction. In the case of personal property he really only gets the balance, with a credit as a matter of convenient bookkeeping to the amount of the tax. In the case of real estate he receives properly speaking an equity. He can pay the tax and get the land freed from the incumbrance, or the State can foreclose the lien and he will receive the balance. In either case the only natural way to treat him is as a recipient of a net amount. The condition of the devolution of the property is the receipt of the transfer tax by the State.

For the reason, therefore, that the inheritance tax is not in any proper sense paid out of the estate which is liable for income tax, I am of opinion that that tax is not deductible under the provisions of section 214 (*a*) (3) of the Act of February 24, 1919 (40 Stat. 1067), in computing the income of estates of deceased persons for the purpose of taxes under the provisions of section 219 (*a*) (40 Stat. 1071).

Respectfully,

C. B. AMES,
Acting Attorney General.

To the SECRETARY OF THE TREASURY.

Act September 8, 1916, ch. 463, 39 Stat., 756.

An Act To increase the revenue, and for other purposes.

TITLE I.—INCOME TAX.

PART I.—*On Individuals.*

SEC. 1. (a) That there shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources by every individual, a citizen or resident of the United States, a tax of two per centum upon such income; and a like tax shall be levied, assessed, collected, and paid annually upon the entire net income received in the preceding calendar year from all sources within the United States by every individual, a non-

resident alien, including interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise.

* * * * *

All the provisions of this title relating to the normal tax on individuals, so far as they are applicable and are not inconsistent with this subdivision and section three, shall apply to the imposition, levy, assessment, and collection of the additional tax imposed under this subdivision.

(c) The foregoing normal and additional tax rates shall apply to the entire net income, except as hereinafter provided, received by every taxable person in the calendar year nineteen hundred and sixteen and in each calendar year thereafter.

INCOME DEFINED.

SEC. 2. (a) That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever: *Provided*, That the term "dividends" as used in this title shall be held to mean any distribution made or ordered to be made by a corporation, joint-stock company, association, or insurance company, out of its earnings or profits accrued since March first, nineteen hundred and thirteen, and payable to its shareholders, whether in cash or in stock of the corporation, joint-stock company, association, or insurance company, which stock dividend shall be considered income, to the amount of its cash value.

(b) Income received by estates of deceased persons during the period of administration or settlement of the estate, shall be subject to the normal and additional tax and taxed to their estates, and also such income of estates or any kind of property held in trust, including such income accumulated

in trust for the benefit of unborn or unascertained persons, or persons with contingent interests, and income held for future distribution under the terms of the will or trust shall be likewise taxed, the tax in each instance, except when the income is returned for the purpose of the tax by the beneficiary, to be assessed to the executor, administrator, or trustee, as the case may be: *Provided*, That where the income is to be distributed annually or regularly between existing heirs or legatees, or beneficiaries the rate of tax and method of computing the same shall be based in each case upon the amount of the individual share to be distributed.

Such trustees, executors, administrators, and other fiduciaries are hereby indemnified against the claims or demands of every beneficiary for all payments of taxes which they shall be required to make under the provisions of this title, and they shall have credit for the amount of such payments against the beneficiary or principal in any accounting which they make as such trustees or other fiduciaries.

* * * * *

INCOME EXEMPT FROM LAW.

SEC. 4. The following income shall be exempt from the provisions of this title:

The proceeds of life insurance policies paid to individual beneficiaries upon the death of the insured; the amount received by the insured, as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon the surrender of the contract; the value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included as income); interest upon the obligations of a State or any political subdivision thereof or upon the obligations of the United States or its possessions or securities issued under the provisions of the Federal farm loan Act of July seventeenth, nineteen hundred and sixteen; the compensation of the present President of the United States during the term for which he has been elected, and the judges of the Supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State, or any political subdivision thereof, except when such compensation is paid by the United States Government.

DEDUCTIONS ALLOWED.

SEC. 5. That in computing net income in the case of a citizen or resident of the United States—

(a) For the purpose of the tax there shall be allowed as deductions—

First. The necessary expenses actually paid in carrying on any business or trade, not including personal, living, or family expenses;

Second. All interest paid within the year on his indebtedness;

Third. Taxes paid within the year imposed by the authority of the United States, or its Territories, or possessions, or any foreign country, or under the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits;

Fourth. Losses actually sustained during the year, incurred in his business or trade, or arising from fires, storms, shipwreck, or other casualty, and from theft, when such losses are not compensated for by insurance or otherwise: *Provided*, That for the purpose of ascertaining the loss sustained from the sale or other disposition of property, real, personal, or mixed, acquired before March first, nineteen hundred and thirteen, the fair market price or value of such property as of March first, nineteen hundred and thirteen, shall be the basis for determining the amount of such loss sustained;

Fifth. In transactions entered into for profit but not connected with his business or trade, the losses actually sustained therein during the year to an amount not exceeding the profits arising therefrom;

Sixth. Debts due to the taxpayer actually ascertained to be worthless and charged off within the year;

Seventh. A reasonable allowance for the exhaustion, wear and tear of property arising out of its use or employment in the business or trade;

* * * * *

PERSONAL EXEMPTION.

SEC. 7. (a) That for the purpose of the normal tax only, there shall be allowed as an exemption in the nature of a deduction from the amount of the net income of each of

said persons, ascertained as provided herein, the sum of $3,000, plus $1,000 additional if the person making the return be a head of a family or a married man with a wife living with him, or plus the sum of $1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of $1,000 be deducted by both a husband and a wife: *Provided*, That only one deduction of $4,000 shall be made from the aggregate income of both husband and wife when living together: *Provided further*, That guardians or trustees shall be allowed to make this personal exemption as to income derived from the property of which such guardian or trustee has charge in favor of each ward or cestui que trust: *Provided further*, That in no event shall a ward or cestui que trust be allowed a greater personal exemption than $3,000, or, if married, $4,000, as provided in this paragraph, from the amount of net income received from all sources. There shall also be allowed an exemption from the amount of the net income of estates of deceased persons during the period of administration or settlement, and of trust or other estates the income of which is not distributed annually or regularly under the provisions of paragraph (b), section two, the sum of $3,000, including such deductions as are allowed under section five.

* * * * *

RETURNS.

SEC. 8. (a) The tax shall be computed upon the net income, as thus ascertained, of each person subject thereto, received in each preceding calendar year ending December thirty-first.

(b) On or before the first day of March, nineteen hundred and seventeen, and the first day of March in each year thereafter, a true and accurate return under oath shall be made by each person of lawful age, except as hereinafter provided, having a net income of $3,000 or over for the taxable year to the collector of internal revenue for the district in which such person has his legal residence or principal place of business, or if there be no legal residence or place of business in the United States, then with the collector of internal revenue at Baltimore, Maryland, in

such form as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, setting forth specifically the gross amount of income from all separate sources, and from the total thereof deducting the aggregate items of allowances herein authorized: *Provided*, That the Commissioner of Internal Revenue shall have authority to grant a reasonable extension of time, in meritorious cases, for filing returns of income by persons residing or traveling abroad who are required to make and file returns of income and who are unable to file said returns on or before March first of each year: *Provided further*, That the aforesaid return may be made by an agent when by reason of illness, absence, or nonresidence the person liable for said return is unable to make and render the same, the agent assuming the responsibility of making the return and incurring penalties provided for erroneous, false, or fradulent return.

(c) Guardians, trustees, executors, administrators, receivers, conservators, and all persons, corporations, or associations acting in any fiduciary capacity, shall make and render a return of the income of the person, trust, or estate for whom or which they act, and be subject to all the provisions of this title which apply to individuals. Such fiduciary shall make oath that he has sufficient knowledge of the affairs of such person, trust, or estate to enable him to make such return and that the same is, to the best of his knowledge and belief, true and correct, and be subject to all the provisions of this title which apply to individuals: *Provided*, That a return made by one of two or more joint fiduciaries filed in the district where such fiduciary resides, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph.

(d) All persons, firms, companies, copartnerships, corporations, joint-stock companies, or associations, and insurance companies, except as hereinafter provided, in whatever capacity acting, having the control, receipt, disposal, or payment of fixed or determinable annual or periodical gains, profits, and income of another individual subject to tax, shall in behalf of such person deduct and withhold from the payment an amount equivalent to the normal tax upon the

same and make and render a return, as aforesaid, but separate and distinct, of the portion of the income of each person from which the normal tax has been thus withheld and containing also the name and address of such person or stating that the name and address or the address, as the case may be, are unknown: *Provided*, That the provision requiring the normal tax of individuals to be deducted and withheld at the source of the income shall not be construed to require the withholding of such tax according to the two per centum normal tax rate herein prescribed until on and after January first, nineteen hundred and seventeen, and the law existing at the time of the passage of this Act shall govern the amount withheld or to be withheld at the source until January first, nineteen hundred and seventeen.

That in either case mentioned in subdivisions (c) and (d) of this section no return of income not exceeding $3,000 shall be required, except as in this title provided.

* * * * *

(f) In every return shall be included the income derived from dividends on the capital stock or from the net earnings of any corporation, joint-stock company or association, or insurance company, except that in the case of nonresident aliens such income derived from sources without the United States shall not be included.

(g) An individual keeping accounts upon any basis other than that of actual receipts and disbursements, unless such other basis does not clearly reflect his income, may, subject to regulations made by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, make his return upon the basis upon which his accounts are kept, in which case the tax shall be computed upon his income as so returned.

ASSESSMENT AND ADMINISTRATION.

SEC. 9. (a) That all assessments shall be made by the Commissioner of Internal Revenue and all persons shall be notified of the amount for which they are respectively liable on or before the first day of June of each successive year, and said amounts shall be paid on or before the fifteenth day of June, except in cases of refusal or neglect to make

such return and in cases of erroneous, false, or fraudulent returns, in which cases the Commissioner of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this title or by existing law, or require the necessary corrections to be made, and the assessment made by the Commissioner of Internal Revenue thereon shall be paid by such person or persons immediately upon notification of the amount of such assessment; and to any sum or sums due and unpaid after the fifteenth day of June in any year, and for ten days after notice and demand thereof by the collector, there shall be added the sum of five per centum on the amount of tax unpaid, and interest at the rate of one per centum per month upon said tax from the time the same became due, except from the estates of insane, deceased, or insolvent persons.

* * * * *

The intent and purpose of this title is that all gains, profits, and income of a taxable class, as defined by this title, shall be charged and assessed with the corresponding tax, normal and additional, prescribed by this title, and said tax shall be paid by the owner of such income, or the proper representative having the receipt, custody, control, or disposal of the same. For the purpose of this title ownership or liability shall be determined as of the year for which a return is required to be rendered.

The provisions of this title relating to the deduction and payment of the tax at the source of income shall only apply to the normal tax hereinbefore imposed upon individuals.

* * * * *

Title II.—Estate Tax.

Sec. 200. That when used in this title—

The term "person" includes partnerships, corporations, and associations;

The term "United States" means only the States, the Territories of Alaska and Hawaii, and the District of Columbia;

The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent; and

The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue at Baltimore, Maryland.

SEC. 201. That a tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate, to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:

One per centum of the amount of such net estate not in excess of $50,000;

Two per centum of the amount by which such net estate exceeds $50,000 and does not exceed $150,000;

Three per centum of the amount by which such net estate exceeds $150,000 and does not exceed $250,000;

Four per centum of the amount by which such net estate exceeds $250,000 and does not exceed $450,000;

Five per centum of the amount by which such net estate exceeds $450,000 and does not exceed $1,000,000;

Six per centum of the amount by which such net estate exceeds $1,000,000 and does not exceed $2,000,000;

Seven per centum of the amount by which such net estate exceeds $2,000,000 and does not exceed $3,000,000;

Eight per centum of the amount by which such net estate exceeds $3,000,000 and does not exceed $4,000,000;

Nine per centum of the amount by which such net estate exceeds $4,000,000 and does not exceed $5,000,000; and

Ten per centum of the amount by which such net estate exceeds $5,000,000.

SEC. 202. That the value of the gross estate of the decedent shall be determined by including the value at the time

of his death of all property, real or personal, tangible or intangible, wherever situated:

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate.

(b) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death, except in case of a bona fide sale for a fair consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title; and

(c) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent.

For the purpose of this title stock in a domestic corporation owned and held by a nonresident decedent shall be deemed property within the United States, and any property of which the decedent has made a transfer or with respect to which he has created a trust, within the meaning of subdivision (b) of this section, shall be deemed to be situated in the United States, if so situated either at the time of the transfer or the creation of the trust, or at the time of the decedent's death.

SEC. 203. That for the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, and from theft, when

such losses are not compensated for by insurance or otherwise, support during the settlement of the estate of those dependent upon the decedent, and such other charges against the estate, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered; and

(2) An exemption of $50,000;

(b) In the case of a nonresident, by deducting from the value of that part of his gross estate which at the time of his death is situated in the United States that proportion of the deductions specified in paragraph (1) of subdivision (a) of this section which the value of such part bears to the value of his entire gross estate, wherever situated. But no deductions shall be allowed in the case of a nonresident unless the executor includes in the return required to be filed under section two hundred and five the value at the time of his death of that part of the gross estate of the nonresident not situated in the United States.

SEC. 204. That the tax shall be due one year after the decedent's death. If the tax is paid before it is due a discount at the rate of five per centum per annum, calculated from the time payment is made to the date when the tax is due, shall be deducted. If the tax is not paid within ninety days after it is due interest at the rate of ten per centum per annum from the time of the decedent's death shall be added as part of the tax, unless because of claims against the estate, necessary litigation, or other unavoidable delay the collector finds that the tax can not be determined, in which case the interest shall be at the rate of six per centum per annum from the time of the decedent's death until the cause of such delay is removed, and thereafter at the rate of ten per centum per annum. Litigation to defeat the payment of the tax sh ll not be deemed necessary litigation.

SEC. 205. That the executor, within thirty days after qualifying as such, or after coming into possession of any property of the decedent, whichever event first occurs, shall give written notice thereof to the collector. The executor, shall also, at such times and in such manner as may be required y the regulations made under this title, file with the collector a return under oath in duplicate,

set ing forth (a) the value of the gross estate of the dece ent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deductions allowed under section two hundred and three; (c) the value of the net estate of the decedent as defined in section two hundred and three; and (d) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

Return shall be made in all cases of estates subject to the tax or where the gross estate at the death of the decedent exceeds $60,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The Commissioner of Internal Revenue shall make all assessments of the tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes.

SEC. 206. That if no administration is granted upon the estate of a decedent, or if no return is filed as provided in section two hundred and five, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return and the Commissioner of Internal Revenue shall assess the tax thereon.

SEC. 207. That the executor shall pay the tax to the collector or deputy collector. If for any reason the amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner of Internal Revenue shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid the commissioner shall notify the executor of the amount of such excess. From the time of such notification to the time of the final

payment of such excess part of the tax, interest shall be added thereto at the rate of ten per centum per annum, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

SEC. 208. That if the tax herein imposed is not paid within sixty days after it is due, the collector shall, unless there is reasonable cause for further delay, commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto. If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution.

SEC. 209. That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien.

If the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) and if the tax in respect thereto is not paid when due, the transferee or trustee shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth.

SEC. 210. That whoever knowingly makes any false statement in any notice or return required to be filed by this title shall be liable to a penalty of not exceeding $5,000, or imprisonment not exceeding one year, or both, in the discretion of the court.

Whoever fails to comply with any duty imposed upon him by section two hundred and five, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, fails to exhibit the same upon request to the Commissioner of Internal Revenue or any collector or law officer of the United States, or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding $500, to be recovered, with costs of suit, in a civil action in the name of the United States.

SEC. 211. That all administrative, special, and general provisions of law, including the laws in relation to the assessment and collection of taxes, not heretofore specifically repealed are hereby made to apply to this title so far as applicable and not inconsistent with its provisions.

SEC. 212. That the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall make such regulations, and prescribe and require the use of such books and forms, as he may deem necessary to carry out the provisions of this title.

Act of March 3, 1917, ch. 159, 39 Stat., Part I, pp. 1000, 1002.

TITLE III.—ESTATE TAX.

SEC. 300. That section two hundred and one, Title II, of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, be, and the same is hereby, amended to read as follows:

SEC. 201. That a tax (hereinafter in this title referred to as the tax), equal to the following percentages of the value of the net estate, to be determined as provided in section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or non-resident of the United States: * * *.

Act of October 3, 1917, ch. 63, 40 Stat., 300.

An Act To provide revenue to defray war expenses, and for other purposes.

TITLE I.—WAR INCOME TAX.

SECTION 1. That in addition to the normal tax imposed by subdivision (a) of section one of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid a like normal tax of two per centum upon the income of every individual, a citizen or resident of the United States, received in the calendar year nineteen hundred and seventeen and every calendar year thereafter.

SEC. 2. That in addition to the additional tax imposed by subdivision (b) of section one of such Act of September eighth, nineteen hundred and sixteen, there shall be levied, assessed, collected, and paid a like additional tax upon the income of every individual received in the calendar year nineteen hundred and seventeen and every calendar year thereafter, as follows:

* * * * *

TITLE IX.—WAR ESTATE TAX.

SEC. 900. That in addition to the tax imposed by section two hundred and one of the Act entitled "An Act to increase the revenue, and for other purposes," approved September eighth, nineteen hundred and sixteen, as amended—

(a) A tax equal to the following percentages of its value is hereby imposed upon the transfer of each net estate of every decedent dying after the passage of this Act, the transfer of which is taxable under such section (the value of such net estate to be determined as provided in Title II of such Act of September eighth, nineteen hundred and sixteen):

* * * * *

TITLE XII.—INCOME TAX AMENDMENTS.

SEC. 1200. That subdivision (a) of section two of such Act of September eighth, nineteen hundred and sixteen, is hereby amended to read as follows:

(a) That, subject only to such exemptions and deductions as are hereinafter allowed, the net income of a taxable person shall include gains, profits, and income, derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, businesses, trade, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in real or personal property, also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

Section four of such Act of September eighth, nineteen hundred and sixteen, is hereby amended to read as follows:

SEC. 4. The following income shall be exempt from the provisions of this title:

The proceeds of life insurance policies paid to individual beneficiaries upon the death of the insured; the amount received by the insured, as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract; the value of property acquired by gift, bequest, devise, or descent (but the

income from such property shall be included as income); interest upon the obligations of a State or any political subdivision thereof or upon the obligations of the United States (but, in the case of obligations of the United States issued after September first, nineteen hundred and seventeen, only if and to the extent provided in the Act authorizing the issue thereof) or its possessions or securities issued under the provisions of the Federal Farm Loan Act of July, seventeenth nineteen hundred and sixteen; the compensation of the present President of the United States during the term for which he has been elected and the judges of the supreme and inferior courts of the United States now in office, and the compensation of all officers and employees of a State, or any political subdivision thereof, except when such compensation is paid by the United States Government.

SEC. 1201. (1) That paragraphs second and third of subdivision (a) of section five of such Act of September eighth, nineteen hundred and sixteen, are hereby amended to read as follows:

Second. All interest paid within the year on his indebtedness except on indebtedness incurred for the purchase of obligations or securities the interest upon which is exempt from taxation as income under this title;

Third. Taxes paid within the year imposed by the authority of the United States (except income and excess profits taxes) or of its Territories, or possessions, or any foreign country, or by the authority of any State, county, school district, or municipality, or other taxing subdivision of any State, not including those assessed against local benefits;

(2) That section five of such Act of September eighth, nineteen hundred and sixteen, is hereby amended by adding at the end of subdivision (a) a further paragraph, numbered nine, to read as follows:

Ninth. Contributions or gifts actually made within the year to corporations or associations organized and operated exclusively for religious, charitable, scientific or educational purposes, or to societies for the prevention of cruelty to children or animals, no part of the net

income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of fifteen per centum of the taxpayer's taxable net income as computed without the benefit of this paragraph. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

* * * * *

SEC. 1203. (1) That section seven of such Act of September eighth, nineteen hundred and sixteen, is hereby amended to read as follows:

SEC. 7. That for the purpose of the normal tax only, there shall be allowed as an exemption in the nature of a deduction from the amount of the net income of each citizen or resident of the United States, ascertained as provided herein, the sum of $3,000, plus $1,000 additional if the person making the return be a head of a family or a married man with a wife living with him, or plus the sum of $1,000 additional if the person making the return be a married woman with a husband living with her; but in no event shall this additional exemption of $1,000 be deducted by both a husband and a wife: *Provided*, That only one deduction of $4,000 shall be made from the aggregate income of both husband and wife when living together: *Provided further*, That if the person making the return is the head of a family there shall be an additional exemption of $200 for each child dependent upon such person, if under eighteen years of age, or if incapable of self-support because mentally or physically defective, but this provision shall operate only in the case of one parent in the same family: *Provided further*, That guardians or trustees shall be allowed to make this personal exemption as to income derived from the property of which such guardian or trustee has charge in favor of each ward or cestui que trust: *Provided further*, That in no event shall a ward or cestui que trust be allowed a greater personal exemption than as provided in this section, from the amount of net income received from all sources. There shall also be allowed an exemption from the amount of the

net income of estates of deceased citizens or residents of the United States during the period of administration or settlement, and of trust or other estates of citizens or residents of the United States the income of which is not distributed annually or regularly under the provisions of subdivision (b) of section two, the sum of $3,000, including such deductions as are allowed under section five.

(2) Subdivision (b) of section seven of such Act of September eighth, nineteen hundred and sixteen, is hereby repealed.

SEC. 1204. (1) That subdivisions (c) and (e) of section eight of such Act of September eighth, nineteen hundred and sixteen, are hereby amended to read as follows:

(c) Guardians, trustees, executors, administrators, receivers, conservators, and all persons, corporations, or associations, acting in any fiduciary capacity, shall make and render a return of the income of the person, trust, or estate for whom or which they act, and be subject to all the provisions of this title which apply to individuals. Such fiduciary shall make oath that he has sufficient knowledge of the affairs of such person, trust, or estate to enable him to make such return and that the same is, to the best of his knowledge and belief, true and correct, and be subject to all the provisions of this title which apply to individuals: *Provided*, That a return made by one of two or more joint fiduciaries filed in the district where such fiduciary resides, under such regulations as the Secretary of the Treasury may prescribe, shall be a sufficient compliance with the requirements of this paragraph: *Provided further*, That no return of income not exceeding $3,000 shall be required except as in this title otherwise provided.

SEC. 29. That in assessing income tax the net income embraced in the return shall also be credited with the amount of any excess profits tax imposed by Act of Congress and assessed for the same calendar or fiscal year upon the taxpayer, and, in the case of a member of a partnership, with his proportionate share of such excess profits tax imposed upon the partnership.

Act of February 24, 1919, ch. 18, 40 Stat. 1057.

An Act To provide revenue, and for other purposes.

TITLE I.—GENERAL DEFINITIONS.

SECTION 1. That when used in this Act—

The term "person" includes partnerships and corporations, as well as individuals;

* * * * *

The term "Commissioner" means the Commissioner of Internal Revenue;

The term "collector" means collector of internal revenue;

The term "Revenue Act of 1916" means the Act entitled "An Act to increase the revenue, and for other purposes," approved September 8, 1916;

The term "Revenue Act of 1917" means the Act entitled "An Act to provide revenue to defray war expenses, and for other purposes," approved October 3, 1917;

The term "taxpayer" includes any person, trust or estate subject to a tax imposed by this Act;

* * * * *

TITLE II.—INCOME TAX.

PART I.—*General Provisions.*

DEFINITIONS.

SEC. 200. That when used in this title—

The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under section 212 or section 232. The term "fiscal year" means an accounting period of twelve months ending on the last day of any month other than December. The first taxable year, to be called the taxable year 1918, shall be the calendar year 1918 or any fiscal year ending during the calendar year 1918;

The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person, trust or estate;

The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 221 or section 237.

* * * * *

The term "paid," for the purposes of the deductions and credits under this title, means "paid or accrued" or "paid or incurred," and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212.

* * * * *

PART II.—*Individuals.*

NORMAL TAX.

SEC. 210. That, in lieu of the taxes imposed by subdivision (a) of section 1 of the Revenue Act of 1916 and by section 1 of the Revenue Act of 1917, there shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax at the following rates:

(a) For the calendar year 1918, 12 per centum of the amount of the net income in excess of the credits provided in section 216: *Provided*, That in the case of a citizen or resident of the United States the rate upon the first $4,000 of such excess amount shall be 6 per centum;

(b) For each calendar year thereafter, 8 per centum of the amount of the net income in excess of the credits provided in section 216: *Provided*, That in the case of a citizen or resident of the United States the rate upon the first $4,000 of such excess amount shall be 4 per centum.

SURTAX.

SEC. 211. (a) That, in lieu of the taxes imposed by subdivision (b) of section 1 of the Revenue Act of 1916 and by section 2 of the Revenue Act of 1917, but in addition to the normal tax imposed by section 210 of this Act, there shall be levied, collected, and paid for each taxable year upon the net income of every individual, a surtax equal to the sum of the following:

* * * * *

NET INCOME DEFINED.

SEC. 212. (a) That in the case of an individual the term "net income" means the gross income as defined in section 213, less the deductions allowed by section 214.

(b) The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) * * *.

* * * * *

GROSS INCOME DEFINED.

SEC. 213. That for the purposes of this title (except as otherwise provided in section 233) the term "gross income"—

(a) Includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including in the case of the President of the United States, the judges of the Supreme and inferior courts of the United States, and all other officers and employees, whether elected or appointed, of the United States, Alaska, Hawaii, or any political subdivision thereof, or the District of Columbia, the compensation received as such), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under subdivision (b) of section 212, any such amounts are to be properly accounted for as of a different period; but

(b) Does not include the following items, which shall be exempt from taxation under this title:

(1) The proceeds of life insurance policies paid upon the death of the insured to individual beneficiaries or to the estate of the insured;

(2) The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract;

(3) The value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included in gross income);

(4) Interest upon (a) the obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia; or (b) securities issued under the provisions of the Federal Farm Loan Act of July 17, 1916; or (c) the obligations of the United States or its possessions; or (d) bonds issued by the War Finance Corporation: *Provided*, That every person owning any of the obligations, securities or bonds enumerated in clauses (a), (b), (c) and (d) shall, in the return required by this title, submit a statement showing the number and amount of such obligations, securities and bonds owned by him and the income received therefrom, in such form and with such information as the Commissioner may require. In the case of obligations of the United States issued after September 1, 1917, and in the case of bonds issued by the War Finance Corporation, the interest shall be exempt only if and to the extent provided in the respective Acts authorizing the issue thereof as amended and supplemented, and shall be excluded from gross income only if and to the extent it is wholly exempt from taxation to the taxpayer both under this title and under Title III;

(5) The income of foreign governments received from investments in the United States in stocks, bonds, or other domestic securities, owned by such foreign governments, or from interest on deposits in banks in the United States of moneys belonging to such foreign governments, or from any other source within the United States;

(6) Amounts received, through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness;

(7) Income derived from any public utility or the exercise of any essential governmental function and accruing to any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, or income accruing to the government of any possession of the United States, or any political subdivision thereof.

Whenever any State, Territory, or the District of Columbia, or any political subdivision of a State or Territory, prior

to September 8, 1916, entered in good faith into a contract with any person, the object and purpose of which is to acquire, construct, operate, or maintain a public utility, no tax shall be levied under the provisions of this title upon the income derived from the operation of such public utility, so far as the payment thereof will impose a loss or burden upon such State, Territory, District of Columbia, or political subdivision; but this provision is not intended to confer upon such person any financial gain or exemption or to relieve such person from the payment of a tax as provided for in this title upon the part or portion of such income to which such person is entitled under such contract;

(8) So much of the amount received during the present war by a person in the military or naval forces of the United States as salary or compensation in any form from the United States for active services in such forces, as does not exceed $3,500.

* * * * *

DEDUCTIONS ALLOWED.

SEC. 214. (a) That in computing net income there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity;

(2) All interest paid or accrued within the taxable year on indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917), the interest upon which is wholly exempt from taxation under this title as income to the taxpayer, or, in the case of a nonresident alien individual, the proportion of such interest which the amount of his gross income from sources within the United States bears to the amount of his

gross income from all sources within and without the United States;

(3) Taxes paid or accrued within the taxable year imposed (a) by the authority of the United States, except income, war-profits and excess-profits taxes; or (b) by the authority of any of its possessions, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 222; or (c) by the authority of any State or Territory, or any county, school district, municipality, or other taxing subdivision of any State or Territory, not including those assessed against local benfits of a kind tending to increase the value of the property assessed; or (d) in the case of a citizen or resident of the United States, by the authority of any foreign country, except the amount of income, war-profits and excess-profits taxes allowed as a credit under section 222; or (e) in the case of a nonresident alien individual, by the authority of any foreign country (except income, war-profits and excess-profits taxes, and taxes assessed against local benefits of a kind tending to increase the value of the property assessed), upon property or business;

(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in trade or business;

(5) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit, though not connected with the trade or business; but in the case of a nonresident alien individual only as to such transactions within the United States;

(6) Losses sustained during the taxable year of property not connected with the trade or business (but in the case of a nonresident alien individual only property within the United States) if arising from fires, storms, shipwreck, or other casualty, or from theft, and if not compensated for by insurance or otherwise;

(7) Debts ascertained to be worthless and charged off within the taxable year;

(8) A reasonable allowance for the exhaustion, wear and tear of property used in the trade or business, including a reasonable allowance for obsolescence;

(9) In the case of buildings, machinery, equipment, or other facilities, constructed, erected, installed, or acquired, on or after April 6, 1917, for the production of articles contributing to the prosecution of the present war, and in the case of vessels constructed or acquired on or after such date for the transportation of articles or men contributing to the prosecution of the present war, there shall be allowed a reasonable deduction for the amortization of such part of the cost of such facilities or vessels as has been borne by the taxpayer, but not again including any amount otherwise allowed under this title or previous Acts of Congress as a deduction in computing net income. At any time within three years after the termination of the present war, the Commissioner may, and at the request of the taxpayer shall, reexamine the return, and if he then finds as a result of an appraisal or from other evidence that the deduction originally allowed was incorrect, the taxes imposed by this title and by Title III for the year or years affected shall be redetermined; and the amount of tax due upon such redetermination, if any, shall be paid upon notice and demand by the collector, or the amount of tax overpaid, if any, shall be credited or refunded to the taxpayer in accordance with the provisions of section 252;

(10) In the case of mines, oil and gas wells, other natural deposits, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case, based upon cost including cost of development not otherwise deducted: *Provided*, That in the case of such properties acquired prior to March 1, 1913, the fair market value of the property (or the taxpayer's interest therein) on that date shall be taken in lieu of cost up to that date: *Provided further*, That in the case of mines, oil and gas wells, discovered by the taxpayer, on or after March 1, 1913, and not acquired as the result of purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery, or within thirty days thereafter; such reasonable allowance in all the above cases to be made under rules and regulations to be prescribed by the Commissioner with the approval of the

Secretary. In the case of leases the deductions allowed by this paragraph shall be equitably apportioned between the lessor and lessee;

(11) Contributions or gifts made within the taxable year to corporations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to the special fund for vocational rehabilitation authorized by section 7 of the Vocational Rehabilitation Act, to an amount not in excess of 15 per centum of the taxpayer's net income as computed without the benefit of this paragraph. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary. In the case of a nonresident alien individual this deduction shall be allowed only as to contributions or gifts made to domestic corporations, or to such vocational rehabilitation fund;

* * * * *

ITEMS NOT DEDUCTIBLE.

SEC. 215. That in computing net income no deduction shall in any case be allowed in respect of—

(a) Personal, living, or family expenses;

(b) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;

(c) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; or

(d) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

CREDITS ALLOWED.

SEC. 216. That for the purpose of the normal tax only there shall be allowed the following credits:

(a) The amount received as dividends from a corporation which is taxable under this title upon its net income, and

amounts received as dividends from a personal service corporation out of earnings or profits upon which income tax has been imposed by Act of Congress;

(b) The amount received as interest upon obligations of the United States and bonds issued by the War Finance Corporation, which is included in gross income under section 213;

(c) In the case of a single person, a personal exemption of $1,000, or in the case of the head of a family or a married person living with husband or wife, a personal exemption of $2,000. A husband and wife living together shall receive but one personal exemption of $2,000 against their aggregate net income; and in case they make separate returns, the personal exemption of $2,000 may be taken by either or divided between them;

(d) $200 for each person (other than husband or wife) dependent upon and receiving his chief support from the taxpayer, if such dependent person is under eighteen years of age or is incapable of self-support because mentally or physically defective.

(e) In the case of a nonresident alien individual who is a citizen or subject of a country which imposes an income tax, the credits allowed in subdivisions (c) and (d) shall be allowed only if such country allows a similar credit to citizens of the United States not residing i such country.

* * * * *

ESTATES AND TRUSTS.

SEC. 219. (a) That the tax imposed by sections 10 and 211 shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income received by estates of deceased persons during the period of administration or settlement of the estate;

(2) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(3) Income held for future distribution under the terms of the will or trust; and

(4) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant to be held or distributed as the court may direct.

(b) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212, except that there shall also be allowed as a deduction (in lieu of the deduction authorized by paragraph (11) of subdivision (a) of section 214) any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is during the taxable year paid to or permanently set aside for the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, or any corporation organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual; and in cases under paragraph (4) of subdivision (a) of this section the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

(c) In cases under paragraph (1), (2), or (3) of subdivision (a) the tax shall be imposed upon the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income properly paid or credited to any legatee, heir or other beneficiary. In such cases the estate or trust shall, for the purpose of the normal tax, be allowed the same credits as are allowed to single persons under section 216.

(d) In cases under paragraph (4) of subdivision (a), and in the case of any income of an estate during the period of administration or settlement permitted by subdivision (c) to be deducted from the net income upon which tax is to be paid by the fiduciary, the tax shall not be paid by the fiduciary, but there shall be included in computing the net income of each beneficiary his distributive share, whether distributed or not, of the net income of the estate or trust for the taxable year, or, if his net income for such taxable year is computed upon the basis of a period different from

that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year upon the basis of which such beneficiary's net income is computed. In such cases the beneficiary shall, for the purpose of the normal tax, be allowed as credits in addition to the credits allowed to him under section 216, his proportionate share of such amounts specified in subdivisions (a) and (b) of section 216 as are received by the estate or trust.

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CREDIT FOR TAXES.

SEC. 222. (a) That the tax computed under Part II of this title shall be credited with:

(1) In the case of a citizen of the United States, the amount of any income, war-profits and excess-profits taxes paid during the taxable year to any foreign country, upon income derived from sources therein, or to any possession of the United States; and

(2) In the case of a resident of the United States, the amount of any such taxes paid during the taxable year to any possession of the United States; and

* * * * *

INDIVIDUAL RETURNS.

SEC. 223. That every individual having a net income for the taxable year of $1,000 or over if single or if married and not living with husband or wife, or of $2,000 or over if married and living with husband or wife, shall make under oath a return stating specifically the items of his gross income and the deductions and credits allowed by this title. If a husband and wife living together have an agreggate net income of $2,000 or over, each shall make such a return unless the income of each is included in a single joint return.

If the taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

* * * * *

FIDUCIARY RETURNS.

SEC. 225. That every fiduciary (except receivers appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for the individual, estate or trust for which he acts (1) if the net income of such individual is $1,000 or over if single or if married and not living with husband or wife, or $2,000 or over if married and living with husband or wife, or (2) if the net income of such estate or trust is $1,000 or over or if any beneficiary of such estate or trust is a nonresident alien, stating specifically the items of the gross income and the deductions and credits allowed by this title. Under such regulations as the Commissioner with the approval of the Secretary may prescribe, a return made by one of two or more joint fiduciaries and filed in the office of the collector of the district where such fiduciary resides shall be a sufficient compliance with the above requirement. The fiduciary shall make oath that he has sufficient knowledge of the affairs of such individual, estate or trust to enable him to make the return, and that the same is, to the best of his knowledge and belief, true and correct.

Fiduciaries required to make returns under this Act shall be subject to all the provisions of this Act which apply to individuals.

* * * * *

TITLE IV.—ESTATE TAX.

SEC. 400. That when used in this title—

The term "executor" means the executor or administrator of the decedent, or, if there is no executor or administrator, any person who takes possession of any property of the decedent; and

The term "collector" means the collector of internal revenue of the district in which was the domicile of the decedent at the time of his death, or, if there was no such domicile in the United States, then the collector of the district in which is situated the part of the gross estate of the decedent in the United States, or, if such part of the gross estate is situated in more than one district, then the collector of internal revenue of such district as may be designated by the Commissioner.

SEC. 401. That (in lieu of the tax imposed by Title II of the Revenue Act of 1916, as amended, and in lieu of the tax imposed by Title IX of the Revenue Act of 1917) a tax equal to the sum of the following percentages of the value of the net estate (determined as provided in section 403) is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or nonresident of the United States:

* * * * *

The taxes imposed by this title or by Title II of the Revenue Act of 1916 (as amended by the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917) or by Title IX of the Revenue Act of 1917, shall not apply to the transfer of the net estate of any decedent who has died or may die while serving in the military or naval forces of the United States in the present war or from injuries received or disease contracted while in such service, and any such tax collected upon such transfer shall be refunded to the executor.

SEC. 402. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

(a) To the extent of the interest therein of the decedent at the time of his death which after his death is subject to the payment of the charges against his estate and the expenses of its administration and is subject to distribution as part of his estate;

(b) To the extent of any interest therein of the surviving spouse, existing at the time of the decedent's death as dower, courtesy, or by virtue of a statute creating an estate in lieu of dower or courtesy;

(c) To the extent of any interest therein of which the decedent has at any time made a transfer, or with respect to which he has at any time created a trust, in contemplation of or intended to take effect in possession or enjoyment at or after his death (whether such transfer or trust is made or created before or after the passage of this Act), except in case of a bona fide sale for a fair consideration in money or

money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such a consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this title;

(d) To the extent of the interest therein held jointly or as tenants in the entirety by the decedent and any other person, or deposited in banks or other institutions in their joint names and payable to either or the survivor, except such part thereof as may be shown to have originally belonged to such other person and never to have belonged to the decedent;

(e) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for a fair consideration in money or money's worth; and

(f) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess over $40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life.

SEC. 403. That for the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

(1) Such amounts for funeral expenses, administration expenses, claims against the estate, unpaid mortgages, losses incurred during the settlement of the estate arising from fires, storms, shipwreck, or other casualty, or from theft, when such losses are not compensated for by insurance or otherwise, and such amounts reasonably required and actually expended for the support during the settlement of the estate of those dependent upon the decedent, as are allowed by the laws of the jurisdiction, whether within or without the United States, under which the estate is being administered, but not including any income taxes upon income received after the death of the decedent, or any estate, succession, legacy, or inheritance taxes;

(2) An amount equal to the value at the time of the decedent's death of any property, real, personal, or mixed, which can be identified as having been received by the decedent as a share in the estate of any person who died within five years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received, if an estate tax under the Revenue Act of 1917 or under this Act was collected from such estate, and if such property is included in the decedent's gross estate;

(3) The amount of all bequests, legacies, devises, or gifts, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees exclusively for such religious, charitable, scientific, literary, or educational purposes. This deduction shall be made in case of the estates of all decedents who have died since December 31, 1917; and

(4) An exemption of $50,000;

* * * * *

SEC. 404. That the executor, within sixty days after qualifying as such, or after coming into possession of any property of the decedent, whichever event first occurs, shall give written notice thereof to the collector. The executor shall also, at such times and in such manner as may be required by regulations made pursuant to law, file with the collector a return under oath in duplicate, setting forth (a) the value of the gross estate of the decedent at the time of his death, or, in case of a nonresident, of that part of his gross estate situated in the United States; (b) the deductions allowed under section 403; (c) the value of the net estate of the decedent as defined in section 403; and (d) the tax paid or payable thereon; or such part of such information as may at the time be ascertainable and such supplemental data as may be necessary to establish the correct tax.

Return shall be made in all cases where the gross estate at the death of the decedent exceeds $50,000, and in the case of the estate of every nonresident any part of whose gross estate is situated in the United States. If the executor is unable to make a complete return as to any part of the gross estate of the decedent, he shall include in his return a description of such part and the name of every person holding a legal or beneficial interest therein, and upon notice from the collector such person shall in like manner make a return as to such part of the gross estate. The Commissioner shall make all assessments of the tax under the authority of existing administrative special and general provisions of law relating to the assessment and collection of taxes.

SEC. 405. That if no administration is granted upon the estate of a decedent, or if no return is filed as provided in section 404, or if a return contains a false or incorrect statement of a material fact, the collector or deputy collector shall make a return and the Commissioner shall assess the tax thereon.

SEC. 406. That the tax shall be due one year after the decedent's death; but in any case where the Commissioner finds that payment of the tax within one year after the decedent's death would impose undue hardship upon the estate, he may grant an extension of time for the payment of the tax for a period not to exceed three years from the due date. If the tax is not paid within one year and 180 days after the decedent's death, interest at the rate of 6 per centum per annum from the expiration of one year after the decedent's death shall be added as part of the tax.

SEC. 407. That the executor shall pay the tax to the collector or deputy collector. If the amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax, except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid, the collector shall notify the executor of the amount of such excess and demand payment thereof. If such excess part of the tax is not paid within thirty days after such notifica-

tion, interest shall be added thereto at the rate of 10 per centum per annum from the expiration of such thirty days' period until paid, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts.

SEC. 408. That if the tax herein imposed is not paid within 180 days after it is due, the collector shall, unless there is reasonable cause for further delay, proceed to collect the tax under the provisions of general law, or commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of the decedent to be sold under the judgment or decree of the court. From the proceeds of such sale the amount of the tax, together with the costs and expenses of every description to be allowed by the court, shall be first paid, and the balance shall be deposited according to the order of the court, to be paid under its direction to the person entitled thereto.

If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution. If any part of the gross estate consists of proceeds of policies of insurance upon the life of the decedent receivable by a beneficiary other than the executor, the executor shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds, in excess of $40,000, of such

policies bear to the net estate. If there is more than one such beneficiary the executor shall be entitled to recover from such beneficiaries in the same ratio.

SEC. 409. That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien. If the Commissioner is satisfied that the tax liability of an estate has been fully discharged or provided for, he may, under regulations prescribed by him with the approval of the Secretary, issue his certificate releasing any or all property of such estate from the lien herein imposed.

If (a) the decedent makes a transfer of, or creates a trust with respect to, any property in contemplation of or intended to take effect in possession or enjoyment at or after his death (except in the case of a bona fide sale for a fair consideration in money or money's worth) or (b) if insurance passes under a contract executed by the decedent in favor of a specific beneficiary, and if in either case the tax in respect thereto is not paid when due, then the transferee, trustee, or beneficiary shall be personally liable for such tax, and such property, to the extent of the decedent's interest therein at the time of such transfer, or to the extent of such beneficiary's interest under such contract of insurance, shall be subject to a like lien equal to the amount of such tax. Any part of such property sold by such transferee or trustee to a bona fide purchaser for a fair consideration in money or money's worth shall be divested of the lien and a like lien shall then attach to all the property of such transferee or trustee, except any part sold to a bona fide purchaser for a fair consideration in money or money's worth.

SEC. 410. That whoever knowingly makes any false statement in any notice or return required to be filed under this title shall be liable to a penalty of not exceeding $5,000, or imprisonment not exceeding one year, or both.

Whoever fails to comply with any duty imposed upon him by section 404, or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or having

in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request to the Commissioner or any collector or law officer of the United States, or his duly authorized deputy or agent, who desires to examine the same in the performance of his duties under this title, shall be liable to a penalty of not exceeding $500, to be recovered, with costs of suit, in a civil action in the name of the United States.

* * * * * * *

TITLE XIV.—GENERAL PROVISIONS.

SEC. 1400. (a) That the following parts of Acts are hereby repealed, subject to the limitations provided in subdivision (b):

(1) The following titles of the Revenue Act of 1916:

Title I (called "Income Tax");

Title II (called "Estate Tax");

Title III (called "Munitions Manufacturers' Tax"), as amended;

Title IV (called "Miscellaneous Taxes").

(2) The following parts of the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917:

Title III (called "Estate Tax");

Section 402 (called "Returns of Dividends").

(3) The following titles of the Revenue Act of 1917:

Title I (called "War Income Tax");

Title II (called "War Excess-Profits Tax");

Title III (called "War Tax on Beverages");

Title IV (called "War Tax on Cigars, Tobacco, and Manufactures Thereof");

Title V (called "War Tax on Facilities Furnished by Public Utilities, and Insurance");

Title VI (called "War Excise Taxes");

Title VII (called "War Tax on Admissions and Dues");

Title VIII (called "War Stamp Taxes");

Title IX (called "War Estate Tax");

Title X (called "Administrative Provisions");

Title XII (called "Income-Tax Amendments").

(b) Such parts of Acts shall remain in force for the assessment and collection of all taxes which have accrued thereunder, and for the imposition and collection of all penalties or forefeitures which have accrued and may accrue in relation to any such taxes, and except that the unexpended balance of any appropriation heretofore made and now available for the administration of any such part of an Act shall be available for the administration of this Act or the corresponding provision thereof: *Provided*, That, except as otherwise provided in this Act, no taxes shall be collected under Title I of the Revenue Act of 1916 as amended by the Revenue Act of 1917, or Title I or II of the Revenue Act of 1917, in respect to any period after December 31, 1917: *Provided further*, That the assessment and collection of all estate taxes, and the imposition and collection of all penalties or forfeitures, which have accrued under Title II of the Revenue Act of 1916 as amended by the Act entitled "An Act to provide increased revenue to defray the expenses of the increased appropriations for the Army and Navy and the extensions of fortifications, and for other purposes," approved March 3, 1917, or Title IX of the Revenue Act of 1917, shall be according to the provisions of Title IV of this Act. In the case of any tax imposed by any part of an Act herein repealed, if there is a tax imposed by this Act in lieu thereof, the provision imposing such tax shall remain in force until the corresponding tax under this Act takes effect under the provisions of this Act.

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In the Supreme Court of the United States.

October Term, 1920

THE UNITED STATES, *Appellant,* vs. ALAN H. WOODWARD, OSCAR W. UNDERWOOD, and REGINALD H. BANISTER, in their capacity as executors of Joseph H. Woodward, deceased, *Appellees,*	In the Supreme Court of the United States, on Appeal from United States Court of Claims.

FACTS

This cause was tried in the United States Court of Claims, on an agreed statement of facts, which are correctly set forth, in the record, in the findings of fact, by that Court.

QUESTION PRESENTED

Was the "Estate Tax" paid by the executors of decedent, which accrued December 15th, 1918, and was claimed as a deduction on the income tax return made by the executor for the taxable year 1918, an allowable deduction in ascertaining for taxation the net income of the said estate for the taxable year 1918?

If the "Estate Tax" paid was an allowable deduction, then the judgment rendered by the Court of Claims should be affirmed.

INCOME TAX LAW

The Revenue Act of 1918 was the income tax law in force as to income tax for the taxable year 1918, and the

sections and portions of sections of this law material to the case at bar, are as follows:

"Section 210. That, in lieu of the taxes imposed by subdivision (a) of Section 1 of the Revenue Act of 1916 and by Section 1 of the Revenue Act of 1917, there shall be levied, collected, and paid for each taxable year upon the net income of every individual, a normal tax at the following rates:" * * *

"Sec. 211. (a) That, in lieu of the taxes imposed by subdivision (b) of Section 1 of the Revenue Act of 1916 and by Section 2 of the Revenue Act of 1917, but in addition to the normal tax imposed by section 210 of this Act, there shall be levied, collected, and paid for each taxable year upon the net income of every individual, a surtax equal to the sum of the following:" * * *

"Sec. 212. (a) That in the case of an individual, the term 'net income' means the gross income as defined in Section 213, less the deductions allowed by Section 214." * * *

"Sec. 213. That for the purposes of this title (except as otherwise provided in Section 233) the term 'gross income'—(a) includes gains, etc." * * *

"Sec. 214. (a) That in computing net income there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, * * *

(2) All interest paid or accrued within the taxable year on indebtedness, except * * *

(3) Taxes paid or accrued within the taxable year imposed (a) By the authority of the United States, except income, war-profits and excess profits taxes; or, * * * (c) By the authority of any State, or territory, or any County, school district, municipality or other taxing subdivision of any State or territory, not including" * * *

"Sec. 219. (a) That the tax imposed by Sections 210 and 211 shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income received by estates of deceased persons during the period of administration or settlement of the estate; * * *

(4) * * *

(b) The fiduciary shall be responsible for making the return for the estate or trust for which he acts. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in Sec. 212, except * * *

(c) In cases under paragraph (1), (2), or (3), of subdivision (a) the tax shall be imposed upon the net income of the estate or trust, and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income properly paid or credited to any legatee, heir or other beneficiary. In such cases the estate or trust shall, for the purpose of the normal tax, be allowed the same credits as are allowed to single persons under section 216."

"Sec. 200. That when used in this title—

The term "taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under section 212 or section 232. * * * The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in a fiduciary capacity for any person, trust or estate."

ESTATE TAX LAW

Joseph H. Woodward died December 15th, 1917, and at the time of his death, the Revenue Act of 1916, as amended by Act approved March 3rd, 1917, and Act approved October 3rd, 1917, was in force.

REVENUE ACT 1916

"Sec. 201. That a tax (hereinafter in this title referred to as the tax) equal to the following per centages of the value of the net estate, to be determined as provided in Sec. 203, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this Act, whether a resident or non-resident of the United States:" * * *

AMENDATORY ACT, March 3rd, 1917

"Sec. 300. That Section two hundred and one, Title II of the Act entitled 'An act to increase the revenue, and for other purposes', approved September eighth, Nineteen Hundred and Sixteen, be and the same is hereby amended to read as follows:

'Sec. 201. That a tax (hereinafter in this title referred to as the tax), equal to the following per centages of the value of the net estate, to be determined as provided in Section two hundred and three, is hereby imposed upon the transfer of the net estate of every decedent dying after the passage of this act, whether a resident or non-resident of the United States:" * * *

REVENUE ACT October 3rd, 1917

"Sec. 900. That in addition to the tax imposed by Section two hundred and one of the Act entitled, 'An Act to increase the revenue, and for other purposes', approved September eighth, nineteen hundred and sixteen, as amended—

(a) A tax equal to the following per centages of its value is hereby imposed upon the transfer of each net estate of every decedent dying after the passage of this Act, the transfer of which is taxable under such section (the value of such net estate to be determined as provided in Title II of such act of September eighth, nineteen hundred and sixteen)." * * *

REVENUE ACT 1916

"Sec. 202. That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property real or personal, tangible or intangible, wherever situated:" * * *

"Sec. 203. That for the purpose of the tax the value of the net estate shall be determined—" * * *

"Sec. 204. That the tax shall be due one year after the decedent's death. If the tax is paid before it is due, a discount at the rate of five per centum per annum, calculated

from the time payment is made to the date when the tax is due, shall be deducted. If the tax is not paid within ninety days after it is due, interest at the rate of ten per centum per annum from the time of the decedent's death shall be added as part of the tax, unless" * * *

"Sec. 205. That the executor, within thirty days after qualifying as such, * * * shall give written notice thereof to the collector. The executor shall also, at such times and in such manner as may be required by the regulations made under this title, file with the collector a return under oath in duplicate, setting forth" * * *

"Sec. 207. That the executor shall pay the tax to the collector or deputy collector. If for any reason the amount of the tax can not be determined, the payment of a sum of money sufficient, in the opinion of the collector, to discharge the tax shall be deemed payment in full of the tax, except as in this section otherwise provided. If the amount so paid exceeds the amount of the tax as finally determined, the Commissioner of Internal Revenue shall refund such excess to the executor. If the amount of the tax as finally determined exceeds the amount so paid, the commissioner shall notify the executor of the amount of such excess. From the time of such notification to the time of the final payment of such excess part of the tax, interest shall be added thereto at the rate of ten per centum per annum, and the amount of such excess shall be a lien upon the entire gross estate, except such part thereof, as may have been sold to a bona fide purchaser for a fair consideration in money or money's worth.

The collector shall grant to the person paying the tax duplicate receipts, either of which shall be sufficient evidence of such payment, and shall entitle the executor to be credited and allowed the amount thereof by any court having jurisdiction to audit or settle his accounts."

"Sec. 208. That if the tax herein imposed is not paid within sixty days after it is due, the collector shall, unless there is reasonable cause for further delay, commence appropriate proceedings in any court of the United States, in the name of the United States, to subject the property of

the decedent to be sold under the judgment or decree of the court * * * If the tax or any part thereof is paid by, or collected out of that part of the estate, passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability, for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate before its distribution."

"Sec. 209. That unless the tax is sooner paid in full, it shall be a lien for ten years upon the gross estate of the decedent, except that such part of the gross estate as is used for the payment of charges against the estate and expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of such lien."

BRIEF AND ARGUMENT FOR APPELLEES

I.

IS A TAX IMPOSED BY UNITED STATES

The "Estate Tax" is a tax, within the meaning of the word "taxes" as used in Sec. 214 * * * (3) Revenue Act of 1918.

It is designated and called a tax in Revenue Act of 1916, Sec. 200, and amendatory Act March 3, 1917, Sec. 300, and Revenue Act of October 3, 1917, Sec. 900, and this tax is imposed, "By the authority of the United States" under the express provisions of these several sections.

It is an indirect tax, an excise tax or duty, laid in the exercise of the power conferred upon Congress by Art. 1, Sec. 8 of the Constitution of the United States, "To lay and collect taxes, duties, imports and excises."

Hilton v. *U. S.*, 1 U. S. (L. Ed.) 556.
Pacific Ins. Co. v. *Soule*, 19 U. S. (L. Ed.) 95.
U. S. v. *Perkins*, 163 U. S. 625.
Knowlton v. *Moore*, 178 U. S. 41.
Snyder v. *Bettman*, 190 U. S. 250.
Cahen v. *Brewster*, 203 U. S. 549.

"Taxes" are generally understood to mean burdens imposed by legislative power upon persons, or property, or occasions, or events, or the exercise of a privilege, to raise money for public purposes. The popular import of words furnishes the general rule for interpretation of public laws.

Savings & Loan Assn. v. *Topeka*, U. S. 22 (L. Ed.) 461.
Maillard et al., v. *Lawrence*, 16 Howard 251 (14 L. Ed. 925).
Harrison v. *State*, 102 Ala. 170.
Henry, exrs. v. *U. S.*, U. S. Sup. Court Rep. (63 L. Ed. 211).

II.

TAX ON TRANSFER OF NET ESTATE

The "Estate Tax" imposed by the Revenue Law in force December 15, 1917, is a tax imposed *on the transfer of the net estate* of decedent.

It is not a tax on the property of deceased or the succession, or the receipt of property as the result of death, or on death as the generating cause of the transfer.

The law expressly imposes this tax *"Upon the transfer of the net estate"* of every decedent.

Sec. 201 Revenue Act of 1916.
Sec. 300 Amendatory Act March 3, 1917.
Sec. 900 Revenue Act October 3, 1917.

The courts, both Federal and State, have adjudged this tax to be a tax *on the transfer of the net estate.*

Lederer v. *Northern Trust Co.*, 262 Fed. Rep. 52.
State ex rel Smith v. *Probate Court, Hennepin Co.* (Minn), 166 N. W. 125.
Knight's Estate, (Pa.) 104 Atl. Rep. 765.
Corbin Tax Comr. v. *Townshed* (Conn.), 103 Atl. Rep. 647.
In re Roebling's Est. (N. J.), 104 Atl. Rep. 295.

This "Estate Tax" on the transfer of the net estate of decedent is analogous to the tax imposed on the transfer, *inter vivos*, of real property imposed by Revenue Act approved October 3, 1917, as follows:

"Sec. 800. That on and after the first day of December, nineteen hundred and seventeen, there shall be levied, collected, and paid for, and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this title, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, are written or printed, by any person, corporation, partnership, or association who makes, signs, issues, sells, removes, consigns, or ships the same, or for whose use or benefit the same are made, signed, issued, sold, removed, consigned, or shipped, the several taxes specified in such schedule." * * *

"Schedule A.—Stamp Taxes. * * * 7. Conveyance: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100.00 and does not exceed $500.00, 50 cents; and for each additional $500.00 or fractional part thereof, 50 cents" * * *

Each tax is imposed on the transfer of the net value of property transferred and not on the property or receipt

of property transferred. An option or contract may be the generating cause of the transfer, *inter vivos*, and death is the generating cause of the transfer of the estate of decedent, but in neither case is the generating cause taxed. It is the effectuated transfer, the event, or occasion of divesting the title or right of possession, actually or constructively, out of one person and investing it in another, that is taxed; the fact that the rates and methods of collecting the tax are different, is immaterial.

III.
TRANSFER NOT EFFECTUATE AT DEATH

The transfer of the estate of a decedent is not effectuate eo instante of death. The transfer is inchoate, in fieri, until the net estate can be ascertained.

Under Alabama law (the jurisdiction), one year is allowed within which debts and claims against the estate may be presented. The property of a decedent passes subject to the payment of debts and charges against the estate, and the cost and expense of administration, and during the year there can be no enforced distribution.

The following sections and parts of sections of the Code of Alabama, of 1907 (now in force) are pertinent:

Sec. 2590. All claims against the estate of a decedent, other than the claims referred to in the preceding section, must be presented within twelve months after the same have accrued, or within twelve months after the grant of letters testamentary or of administration; and if not presented within that time, they are forever barred, and the payment or allowance thereof is prohibited.

Sec. 2596. All the property of the decedent, except as otherwise provided, is charged with the payment of his debts, and, if necessary, may be sold for that purpose.

Sec. 2725. The court may also, in cases of intestacy, make an order of distribution out of the assets of the decedent, on the application of any person entitled to distribution, after twelve months from the grant of letters.

Sec. 2735. The orders of the Court, made after

twelve months from the grant of letters, on the application of any legatee or person entitled to distribution, is a protection to the executor or administrator, to the extent of the amount or value of the legacy or share ordered to be paid or distributed.

Sec. 2736. After the expiration of twelve months from the grant of letters testamentary, or of administration, with the will annexed, if there are more than sufficient assets in the hands of such executor or administrator to pay the debts of the deceased, any legatee may apply to the probate court of the County, in which letters were granted, to compel the payment of his legacy; and a widow who has dissented from her husband's will, or her personal representative, if she is dead, shall have like remedy to compel the payment of the distributive share to which she may be entitled.

Sec. 2803. No suit must be commenced against an executor or administrator, as such, until six months, and no judgment rendered against him, as such, until twelve months after the grant of letters testamentary or of administration.

Sec. 3754. The real estate of persons dying intestate as to such estate descends, subject to the payment of debts, charges, against the estate, and the widow's dower, as follows: * * *

Sec. 3763. The personal estate of persons dying intestate as to such estate, after the payment of debts and charges against the estate, is to be distributed in the same manner as his real estate, and according to the same rules; except * * *

Sec. 6152. Every person of the age of twenty-one years, of sound mind, may, by his last will, devise his lands, tenements, or hereditaments, or any interest therein, descendible to his heirs.

Sec. 6157. All persons over the age of eighteen years, of sound mind, and no others, may also, by their last will, dispose of all their personal property.

For the purpose of administration, the title is vested in the personal representative to all personal property,

choses in action, and effects of the estate, and the personal representative may sell this personal property, collect debts owing to the estate, or sue to enforce collection, or to recover or protect the property, and exercise the same power of control and protection over this property as the deceased could have exercised if living.

Carroll v. *Richardson*, 87 Ala. 605.
Van Hoose v. *Buch*, 54 Ala. 352.
Snodgrass v. *Cabiness*, 15 Ala. 160.
Upchurch v. *Morsworthy*, 15 Ala. 705.
Baldwin v. *Hatchett*, 56 Ala. 461.
Waring v. *Lewis*, 53 Ala. 615.
Hutchison v. *Owen*, 59 Ala. 326.
Nelson v. *Stollenwerck*, 60 Ala. 140.

As to real property, the personal representative has the right and power to take possession of the same, intercept and collect the rents and income therefrom, and may sell the property, if necessary, for the payment of debts and charges against the estate.

Calhoun v. *Fletcher*, 63 Ala. 580.
McCookle v. *Rhea*, 75 Ala. 215.
Nelson Exrs. v. *Murphy*, 69 Ala. 599.
Landford v. *Dunklin & Reese Adm.*, 71 Ala. 605.

Until the expiration of the year, the law does not impute to the personal representative a knowledge of the condition of the estate. He can not be coerced to make distribution to heirs, or to pay or assent to a legacy, and no bequest or legacy is considered due until the expiration of the year.

The income from the estate during the year is collected by the personal representative, and belongs to the estate, and may be used in paying debts and charges against the estate (with the exception of income from specific legacies).

Hallett & Walker, exrs. v. *Allen*, 13 Ala. 554.
Meyers, Exrs. v. *Meyers*, 33 Ala. 85.
Foscue v. *Lyons*, 55 Ala. 440.
Walker v. *Johnson*, 82 Ala. 347.
Carroll v. *Richardson*, 87 Ala. 605.
Jackson v. *Rowell*, 87 Ala. 685.
Ward v. *Ward*, 90 Ala. 81.
Thompson on Wills, Sec. 347.
Underhill on Wills, Vol. 1, Sec. 409.

A specific legacy is construed as segregated from the estate, and the legatee is entitled to the income from death of testator to be accounted for by the personal representative to the legatee after the lapse of the year.

Meyers, Exrs. v. *Meyers*, 33 Ala. 85.
Gilmer, Legatees, v. *Gilmer, Exrs.*, 42 Ala. 9.
Hooper v. *Bibb & Falkner, Exrs.*, 47 Ala. 547.
Brown v. *Grimes*, 60 Ala. 647.
Mayberry v. *Grady*, 67 Ala. 147.
Kelly v. *Richardson, Exrs.*, 100 Ala. 584.
Graham, Exrs. v. *Deyampert*, 106 Ala. 279.
Thompson on Wills, Sec. 136 to Sec. 140 inc., Sec. 143.
Rood on Wills, Secs. 705, 706, 707.
Underhill on Law of Wills, Vol. 1, Sec. 405 to 408.

In the case at bar, the executors collected no income from specific legacies; the entire income collected belonged to the estate, and was used towards paying the "estate tax."

IV.
CHARGE AGAINST AND PAID BY ESTATE

The "Estate Tax" is a charge against and is paid by the estate, the same as any other debt or charge against the estate.

Under the express provisions of law, the executor is required to pay the tax, and such payment shall entitle the executor to be credited and allowed the amount paid by any court having jurisdiction to audit or settle his account;

it is a lien for ten years upon the gross estate (unless sooner paid); if not paid within sixty days after due, any property belonging to the estate may be subjected to payment; "It being the purpose and intent of this title that so far as is practicable and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate before its distribution." Secs. 207, 208, 209, Rev. Stat. 1916.

The will of the decedent in the case at bar, made no reference to "Estate Tax."

A Federal court, and several State courts have adjudged that this tax is a charge against the estate and must be paid by the estate, as any other debt or charge against the estate, or expense of administration.

Lederer v. *Northern Trust Co.*, 262 Fed. Rep. 52.
Corbin, Tax Commr. v. *Townshend* (Conn.), 103 Atl. Rep. 647.
In re Roebling's Est. (N. J.), 104 Atl. Rep. 295.
State ex rel Smith v. *Probate Ct.* (Hennepin County), (Minn.) 166 N. W. 125.
Knight's Est. (Pa.), 104 Atl. Rep. 765.
Plunkett, Exrs. v. *Old Colony Trust Co.*, 233 Mass. 471 (124 N. W. 265).
In re Hamlin Exrs. 226 N. Y. 407 (124 N. E. 4).
State of Ill. v. *Northern Trust Co., Exrs.*, 289 Ill. 475 (124 N. E. 662).

This tax is not paid by an heir or legatee. It does not reduce any inheritance or legacy, other than to the extent that any other debt or charge against the estate or cost and expense of administration (which are primary charges) may reduce a legacy or inheritance. The tax rests upon the residuary estate (if there is a residuary estate).

Sec. 208, Revenue Act 1916.

The residuary legatee gets all that he is entitled to, for

it is only the rest and residue (that part remaining after the payment of all debts and charges against the estate and cost and expense of administration) that is devised to him.

V.

TAX ALLOWABLE DEDUCTION UNDER STATUTE

The law expressly declares that only net income is to be taxed. "That in computing net income there shall be allowed as deductions * * * Taxes paid or accrued within the taxable year imposed by the authority of the United States, except income, war-profits and excess profits taxes."

Secs. 210, 211, 214, Revenue Act 1918.

The words in Sec. 214 "Interest paid or accrued," "Taxes paid or accrued," mean interest paid or due and payable, taxes paid or due and payable, an enforcible demand.

The statute expressly makes the "estate tax" due one year after decedent's death; a discount is allowed if tax is paid before due, which is inconsistent with any theory that the tax accrued at the date of decedent's death; the tax bears no intrest if paid within sixty days from time due, but if not paid within sixty days, there can be enforced payment; if not paid within ninety days from time due, a penalty of 6 or 10 per cent interest is incurred from death of decedent. Secs. 204, 208. If tax is estimated under Sec. 207, if there should be a balance due, the balance bears interest from notification.

Rapalje & Lawrence Law Dictionary.
Words and Phrases (Vol. 1, page 101).
Cutcliff v. *McAnally*, 88 Ala. 507.
Fay v. *Hollotan* (N. Y.), 35 Barb. 295.
Allen v. *Armstrong*, 68 N. Y. Supp., 1079.
Mundt v. *Scheboygan*, 31 Wis. 451.
Rodefeld v. *Winkleman*, 136 S. W. 4.

In the case at bar, the United States imposed an "Estate Tax" of $489,834.07, on the estate of decedent. The decedent died Dcember 15, 1917, and this tax was due and payable, or accrued, December 15, 1918, and was paid by the executors February 8, 1919.

Sec. 204 Revenue Act 1916.

The executors made income tax return March 12, 1919, of income received for the estate for the taxable year 1918, and claimed the "Estate Tax" paid as a deduction.

The gross income collected by the executors in said taxable year was considerably less than the "Estate Tax" paid, and all of said income collected was used by the executors towards paying the "Estate Tax."

This deduction claimed was disallowed and the executors were forced to pay an income tax for the estate for the taxable year 1918, in amount of $165,075.78.

If the deduction claimed had been allowed, there was no net income to be taxed.

Under the provisions of Sec. 214, *all taxes* imposed by and paid to the United States are allowable deductions excepting only those specifically excepted and the "Estate Tax" is not within the exceptions. The word "taxes" is as broad in its scope as taxes imposed by the Government.

In construing statutes, it is well settled that an exception in a statute amounts to an application of its provisions to all other cases not excepted, and excludes all other exceptions.

Bend v. *Hoyt*, 13 Pet. 261.
Equitable L. Assn. Soci. v. *Clements*, 140 U. S. 261.
Arnold v. *U. S.*, 147 U. S. 494.

The maxim, "*Expressio unius est exclusio alterius*," is an universal maxim in the construction of statutes.

U. S. v. *Arrendendo*, 6 Pet. 725.
Sturgis v. *Draper*, 20 U. S. (L. Ed.), 255.

Arthur v. *Cumming*, 91 U. S. 362.
U. S. v. *Macon County*, 99 U. S. 582.
Walla Walla v. *Walla Walla Water Co.*, 172 U. S. 1.

The exception of a particular thing from the operation of the general wording of a statute shows that, in the opinion of the law makers, the thing excepted would be within the general words, had not the exception been made.

Brown v. *Maryland*, 12 Wheat. 419.

It is well settled, that in the construction of a law, its meaning must first be sought in the language employed. If that be plain, it is the duty of the court to enforce the law as written.

U. S. v. *American Brewing Co.*, 64 U. S. (L. Ed.) 175.

If there is a doubt as to liability for taxation, the construction is in favor of the exemption of the tax payer, for a tax can not be imposed without clear and express words for that purpose.

U. S. v. *Isham*, 17 Wall. 496.
Gould v. *Gould*, 245 U. S. 151.

VI.
THEORY OF APPELLANT.

The theory of appellant in this cause (as set forth in brief and argument in the Court of Claims) is:

(1) "The Federal estate tax is a tax upon the passing of property from the dead to the living; it is a toll taken from the property transferred and does not constitute a part of the estate which is received by the executors to be administered and settled."

"It is 'toll' cut out of the estate in passing, and the property that reaches the executors is the original property diminished by the amount of tax. It follows that the

amount of tax does not constitute a part of the estate which is administered by the executors."

"The income tax is imposed on the income received from the estate by the executors during the period of administration; the liquidation of the Federal estate tax by the executors does not constitute a payment of taxes by the estate within the meaning of Section 214 (a) of the Revenue Act of 1918."

"The tax is in reality a toll taken upon the passing of the property from the dead to the living; the tax itself comes into the hands of the executors in trust for the United States."

"The Government collects an income tax on the income accruing up to the moment of death. It then takes out of the estate a certain part known as the Federal estate tax. The remainder of the property of the deceased passes to the executors and becomes the estate, the income of which is taxable while the estate is being administered. When the estate passes into the possession of an executor he holds in trust for the United States that portion which is required to be deducted as a transfer tax. The remainder is the estate which he holds in trust for creditors and beneficiaries, the income of which is taxable. When he pays to the Government that which he has been holding in trust for it, he pays nothing out of the estate whose income is subject to tax. The law separates this part of the original estate from that part which is to be treated as the estate for purposes of the income tax."

(2) This theory is antagonistic to and inconsistent with the express provisions of the "estate tax" law, the practical administration of the law and the facts.

Under the express provisions of law:

The executor makes return of entire gross estate; a lien is fixed on the entire gross estate for ten years (unless the tax is sooner paid), excepting that such part of the gross estate as is used for the payment of charges against the estate and expense of its administration allowed by the court having jurisdiction shall be divested of such lien; the tax on the entire net estate is due one year after death

of decedent; if paid before due, there is a discount; if delinquent in payment there is a penalty; if net estate can not be determined when the tax is due, payment of an estimated amount must be made, if payment is excessive, there is a refund; if not enough, additional payment must be made; if tax is not paid within sixty days after due, collector must commence appropriate proceedings to enforce collection; the executor is required to pay the tax to the collector, the collector is required to execute receipt in duplicate for tax paid, and the court of the jurisdiction must allow the executor credit for the amount paid on audit or settlement by executor; "It being the purpose and intent of this title, so far as is practicable and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate before its distribution"; an income tax is laid on net income received by estate of deceased persons during the period of administration, and the executor is required to make return for the estate.

(3) Under the theory advanced:

A toll is taken from the estate, cut out of the corpus, and is set aside for the Government's share, or tax; this share set apart for the Government does not constitute a part of the estate which is administered by the executor; this share of the Government (which is the tax) comes into the hands of the executor as trustee (not as executor), in trust for the United States; the remainder of the property belonging to the estate passes to the executor, as executor, and becomes the estate, and the income from this share is subject to income tax while the estate is being administered, and the executor holds this in trust for creditors and beneficiaries, the income from which is taxable; the executor as trustee pays to the Government that which he has been holding in trust for it; as executor he pays nothing out of the estate whose income is subject to tax.

We find no provision of law for making or indicating an allotment, or who is to make it; nothing to indicate what is to be allotted, or that the executor is to be trustee of the share allotted, or in any way indicating the powers or duties of the trustee.

We are not informed as to who gets the income from the share allotted, or who sustains the loss, if there should be a loss, or who gets the profit, if there should be a profit in realizing on the Government's share, or who, or when, or in what way this share is converted into money.

If the theory be correct, jurisdiction over a part of the estate is taken from the probate court; the lien on the entire gross estate would be discharged when the Government's claim is satisfied by allotment; neither the probate court or the executor, as executor, under the will, would have jurisdiction or power of sale, or otherwise over the share allotted to the Government; the executor, as executor, could not be required to pay, nor could the court be required to allow the executor credit for payment of a claim satisfied by allotment.

The theory and the law are incompatible. Both can not stand. One or the other must fall.

Under this theory no one pays the "estate tax." While it is called a tax (if the theory is correct), the Government reaches out and appropriates a part of the corpus as its share of the estate. Its share for permitting the balance of the estate to pass, and this is done before the estate comes into the custody of the executor.

The theory is an attempt to make the "estate tax" analogous to the succession tax of the State.

It is obvious that the "estate tax" is not analogous to the succession tax of a State.

It is settled law that the State has the exclusive power to regulate the succession or inheritance, and that the Federal Government has no power to regulate or in anywise control the succession or inheritance.

The Federal Government has the power to tax, while the State has the power to tax, and also the power to regulate the succession or inheritance.

The right to take property by devise or descent is not a natural right; it exists only when conferred by law of the State, and the power which confers the right may impose conditions upon it.

If it be true that the right of testamentary disposition

or inheritance is purely statutory, the State has the power and right to require contribution from, to take toll out of, that which the State, if it saw proper, might claim and keep in *toto* or *escheat* to the State.

U. S. v. *Perkins*, 163 U. S. 625.
Magoon v. *Ill. Trust & Savings Bank*, 170 U. S. 283.
Knowlton v. *Moore*, 178 U. S. 41 (44 L. Ed. 969).
Snyder v. *Bettman*, 190 U. S. 251 (47 L. Ed. 1036).
Cahen v. *Brewster*, 203 U. S. 549 (51 L. Ed. 313).
Plumber v. *Coller*, 178 U. S. 115.
U. S. v. *Fox*, 94 U. S. 315.
Mager v. *Grimer*, 49 U. S. 490 (8 How. 490).

While the State has no power to tax property of the United States, or to tax bonds issued by the United States, the State has the right, in exercising its power, in regulating the succession, to take toll from a legacy to the United States, as decided in the Perkins case, *supra*, or to take toll from a legatee of bonds issued by the United States, as decided in *Plumber* v. *Coller*, *supra;* or may prohibit a devise of land to the United States as decided in the Fox case, *supra*.

The case of *Prentiss* v. *Eisner*, 267 Fed. 16, follows and is based on the Perkins case.

We submit that the opinion of the Court of Claims in the case at bar is clear and convincing, and that the judgment of that court should be affirmed.

Respectfully,

E. J. SMYER,
Attorney for Appellees.

UNITED STATES *v.* WOODWARD ET AL., EXECUTORS OF WOODWARD.

APPEAL FROM THE COURT OF CLAIMS.

No. 811. Argued April 18, 1921.—Decided June 6, 1921.

The Revenue Act of 1918, Title II, taxes by fixed percentages the net income "received by estates of deceased persons during the period of administration or settlement," and provides that the net income shall be ascertained by making from the gross income, as defined, certain deductions, including "taxes paid or accrued within the taxable year imposed by the authority of the United States, except income, war-profits and excess-profits taxes."

Held: (1) That "estate taxes," imposed by the Revenue Act of 1916, are among the taxes deductible. (See *New York Trust Co.* v. *Eisner*, *ante*, 345.) P. 634.

(2) That an estate tax "accrued" when, by the terms of the Act of 1916, it became due, *viz.*, one year from the decedent's death; and, when paid by executors after the income tax year in which it accrued but before their return of income for that year was made or required, was properly deducted. P. 635.

56 Ct. Clms. 133, affirmed.

THE case is stated in the opinion.

The Solicitor General and *Mr. Frank Davis, Jr.*, Special Assistant to the Attorney General, for the United States.

Mr. E. J. Smyer for appellees.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This is an appeal from a judgment in favor of the executors of Joseph H. Woodward, deceased, for money

claimed to have been erroneously exacted from them as a tax on the income of his estate while in their hands.

The testator died December 15, 1917. The Revenue Act of 1916 [1] "imposed upon the transfer of the net estate of every decedent " dying thereafter a tax which it called an "estate tax." The act fixed the amount of the tax at a named percentage "of the value of the net estate," made the tax a lien upon the "entire gross estate," required that it be paid "out of the estate " before distribution, declared that it should "be due one year after the decedent's death," charged the executor or administrator with the duty of paying it, and declared that the receipt therefor should entitle him to a credit for the amount in the usual settlement of his accounts. Under that act these executors were required to pay an estate tax of $489,834.07. The tax became due December 15, 1918, and they paid it February 8, 1919. Shortly thereafter the executors made a return, under the Revenue Act of 1918,[2] of the income of the testator's estate for the taxable year 1918 and claimed in the return that in ascertaining the net income for that year the estate tax of $489,834.07 should be deducted. The Commissioner of Internal Revenue refused to allow the deduction and assessed an income tax of $165,075.78 against the estate. Had the deduction been allowed there would have been no taxable net income for that year and no part of the $165,075.78 would have been collectible. Payment of that sum, as so assessed, was pressed on the executors and they paid it under duress. Then, after taking the necessary steps to entitle them to do so, they brought this suit in the Court of Claims to recover the money thus exacted from them.

The sole question for decision is, was the estate tax

[1] C. 463, Title II, 39 Stat. 777; c. 159, Title III, 39 Stat. 1002; c. 63, Title IX, 40 Stat. 324.

[2] C. 18, Title II, §§ 210-214, 219, 1405, 40 Stat. 1062-1067, 1071, 1151.

paid by the executors, and claimed by them as a deduction in the income tax return for the year 1918, an allowable deduction in ascertaining the net taxable income of the estate for that year? The Court of Claims held that it was. 56 Ct. Clms. 133.

The solution of the question turns entirely upon the statutory provisions under which the two taxes were severally collected. The Act of 1918, by §§ 210, 211 and 219, subjects the net income "received by estates of deceased persons during the period of administration or settlement" to an income tax measured by fixed percentages thereof; by §§ 212 and 219 requires that the net income be ascertained by taking the gross income, as defined in § 213, and making the deductions named in § 214, and by § 214 makes express provision for the deduction of "taxes paid or accrued within the taxable year imposed (a) by the authority of the United States, except income, war-profits and excess-profits taxes." This last provision is the important one here. It is not ambiguous, but explicit, and leaves little room for construction. The words of its major clause are comprehensive and include every tax which is charged against the estate by the authority of the United States. The excepting clause specifically enumerates what is to be excepted. The implication from the latter is that the taxes which it enumerates would be within the major clause were they not expressly excepted, and also that there was no purpose to except any others. Estate taxes were as well known at the time the provision was framed as the ones particularly excepted. Indeed, the same act, by §§ 400–410, expressly provides for their continued imposition and enforcement. Thus their omission from the excepting clause means that Congress did not intend to except them.

The Act of 1916 calls the estate tax a "tax" and particularly denominates it an "estate tax." This court recently has recognized that it is a duty or excise and is

imposed in the exertion of the taxing power of the United States. *New York Trust Co.* v. *Eisner, ante,* 345. It is made a charge on the estate, and is to be paid out of it by the administrator or executor substantially as other taxes and charges are paid. It becomes due not at the time of the decedent's death, as suggested by counsel for the Government, but one year thereafter, as the statute plainly provides. It does not segregate any part of the estate from the rest and keep it from passing to the administrator or executor for purposes of administration, as counsel contend, but is made a general charge on the gross estate and is to be paid in money out of any available funds or, if there be none, by converting other property into money for the purpose.

Here the estate tax not only "accrued," which means became due, during the taxable year of 1918, but it was paid before the income for that year was returned or required to be returned. When the return was made the executors claimed a deduction by reason of that tax. We hold that under the terms of the Act of 1918 the deduction should have been allowed.

Judgment affirmed.